

5

United States  
Circuit Court of Appeals  
For the Ninth Circuit.

---

JULIA MOSHER COLLINS, WILLIAM B.  
LOUNT, and HATTIE L. MOSHER,  
Appellants,  
vs.  
CITY OF PHOENIX, a Municipal Corporation,  
Appellee.

---

Transcript of Record.

---

Upon Appeal from the United States District Court  
for the District of Arizona.

---

FILED  
AUG 11 1920  
F. D. MONCKTON,  
CLERK.



United States  
Circuit Court of Appeals  
For the Ninth Circuit.

---

JULIA MOSHER COLLINS, WILLIAM B.  
LOUNT, and HATTIE L. MOSHER,  
Appellants,  
vs.  
CITY OF PHOENIX, a Municipal Corporation,  
Appellee.

---

Transcript of Record.

---

Upon Appeal from the United States District Court  
for the District of Arizona.

---



# INDEX TO THE PRINTED TRANSCRIPT OF RECORD.

---

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

	Page
Affidavit of Applicant for Writ of Prohibition..	3
Affidavit of Service of Citation on Appeal.....	100
Amended Assignment of Errors.....	37
Answer .....	22
Application for Writ of Prohibition.....	1
Bond on Appeal.....	42
Certificate of Clerk U. S. District Court to Trans- script of Record.....	109
Citation on Appeal.....	110

## EXHIBITS:

Exhibit "A" Attached to Affidavit of Ap- plicant for Writ of Prohibition—Reso- lution No. 380.....	10
Exhibit "A" Attached to Answer—Plat of Survey of Churchill Addition to the City of Phoenix.....	27
Exhibit "B" Attached to Affidavit of Ap- plicant for Writ of Prohibition—Pro- test .....	19
Exhibit "B" Attached to Answer—Ordi- nance No. 192.....	29

Index.	Page
EXHIBITS—Continued:	
Exhibit "C" Attached to Affidavit of Applicant for Writ of Prohibition—Protest .....	20
Exhibit "C" Attached to Answer—Plat of Resurvey of Churchill's Addition to the City of Phoenix.....	31
Plaintiffs' Exhibit "A"—Deed Dated September 21, 1881, B. L. Conyers et al. to Samuel D. Lount.....	78
Plaintiffs' Exhibit "A"—Deed Dated September 21, 1881, B. L. Conyers et al. to Samuel D. Lount.....	101
Plaintiffs' Exhibit "B"—Plat of Resurvey of Churchill's Addition to City of Phoenix .....	105
Plaintiffs' Exhibit "D"—Declaratory Statement Showing Segregation of Property from Government Property January 10, 1871 .....	107
Defendant's Exhibit No. 1—Petition and Protest of Property Owners to the Mayor, Commissioners and City Manager .....	78
Defendant's Exhibit No. 2—Ordinance No. 275 .....	56
Defendant's Exhibit No. 4—Warranty Deed Dated January 8, 1903, Hattie L. Mosher to Julia A. Lount.....	80
Defendant's Exhibit No. 5—Deed Dated	

Index.	Page
EXHIBITS—Continued:	
February 4, 1904, Julia Lount to W. W. Moore .....	81
Defendant's Exhibit No. 6—Warranty Deed Dated April 30, 1908, Hattie L. Mosher to Julia W. Mosher.....	82
Defendant's Exhibit No. 7—Decree of Distribution in Estate of Julia A. Lount, Recorded November 9, 1908.....	82
Defendant's Exhibit No. 8—Realty Mortgage Dated November 9, 1908, William B. Lount et al. to Katie F. Young.....	84
Defendant's Exhibit No. 9—Lease Dated December 23, 1908, W. B. Lount et al. to J. B. Hocker.....	85
Defendant's Exhibit No. 10—Agreement Dated January 2, 1909, W. B. Lount and Hattie L. Mosher.....	86
Defendant's Exhibit No. 11—Power of Attorney Dated February 27, 1909, Hattie L. Mosher to W. B. Lount.....	87
Defendant's Exhibit No. 12—Realty Mortgage Dated January 10, 1911, W. B. Lount et al. to Phoenix Savings Bank & Trust Company.....	87
Defendant's Exhibit No. 13—Power of Attorney Dated May 9, 1912, Hattie L. Mosher to W. B. Lount.....	88
Defendant's Exhibit No. 14—Realty Mortgage Dated June 26, 1912, W. B. Lount	

Index.	Page
EXHIBITS—Continued:	
et al. to Phoenix Savings Bank & Trust Company .....	88
Defendant's Exhibit No. 15—Power of At- torney Dated September 14, 1912, Hat- tie L. Mosher to W. B. Lount.....	89
Defendant's Exhibit No. 16—Realty Mort- gage Dated November 8, 1912, W. B. Lount et al. to Phoenix Savings Bank & Trust Company.....	89
Defendant's Exhibit No. 17—Lease Dated November 8, 1912, W. B. Lount to W. E. Ferguson et al.....	90
Defendant's Exhibit No. 18—Realty Mort- gage Dated September 13, 1916, Hattie L. Mosher to Paola Perrazzo.....	90
Defendant's Exhibit No. 19—Realty Mort- gage Dated October 10, 1916, W. B. Lount et al to Phoenix Savings Bank & Trust Company.....	92
Findings and Judgment.....	33
Judgment .....	33
Motion for Order Transmitting Plaintiffs' Orig- inal Exhibit "C".....	98
Names and Addresses of Attorneys of Record..	1
Notice of Filing and Presentation of Statement of Evidence.....	93
Order Allowing Appeal and Fixing Bond.....	40
Order Approving Statement of Evidence.....	95
Order Directing Transmission of Plaintiffs' Original Exhibit "C".....	99



Index.	Page
Order Enlarging Time to File Record and	
Docket Case .....	97
Petition for Appeal.....	36
Praecipe for Transcript of Record.....	107
Statement of Evidence.....	44
Stipulation in re Statement of Evidence.....	95
TESTIMONY ON BEHALF OF PLAIN-	
TIFFS:	
MILLS, A. S.....	49
Cross-examination .....	51
Redirect Examination.....	52
Recalled in Rebuttal.....	77
MOSHER, HATTIE L.....	44
Cross-examination .....	48
In Rebuttal .....	76
REDEWILL, EUGENE .....	53
Cross-examination .....	55
REDEWILL, VICTOR A.....	52
TESTIMONY ON BEHALF OF DEFEND-	
ANT:	
HITCHCOCK, LYTTON B.....	73
KIRKLAND, GEORGE .....	70
Cross-examination .....	71
KITCHEN, OTTO .....	73
PATRICK, H. R.....	65
Cross-examination .....	67
PORTERIE, J. A.....	74
Cross-examination .....	74
STANDAGE, CLARENCE .....	64
THOMPSON, V. A.....	72

Index.	Page
TESTIMONY ON BEHALF OF DEFEND-	
ANT—Continued:	
Cross-examination . . . . .	72
Redirect Examination . . . . .	72
TURNEY, HOMER A. . . . .	68
Cross-examination . . . . .	70
Redirect Examination . . . . .	70

**Names and Addresses of Attorneys of Record.**

J. B. WOODWARD, Esq., Phoenix, Ariz.,  
Solicitor for the Appellants.

RICHARD E. SLOAN, Esq., Phoenix, Ariz., and  
JAMES E. NELSON, Esq., Phoenix, Ariz.,  
Solicitors for the Appellee.

---

In the District Court of the United States in and for  
the District of Arizona.

No. —.

JULIA MOSHER COLLINS, WILLIAM B.  
LOUNT, HATTIE L. MOSHER,  
Plaintiffs,

vs.

CITY OF PHOENIX, a Municipal Corporation,  
Defendant.

**Application for Writ of Prohibition.**

To the Honorable, the District Court of the United  
States in and for the District of Arizona, and to  
the Honorable WILLIAM H. SAWTELLE,  
Judge Thereof.

Now come the plaintiffs, Julia Mosher Collins,  
William B. Lount and Hattie L. Mosher, and move  
this Court to make an order and to cause to be issued  
out of, and under the seal of this court an alternative  
writ of prohibition restraining and prohibiting the  
defendant from proceeding under, or doing any act  
or thing in pursuance of Resolution No. 380 of the  
City of Phoenix with respect to the property of the

plaintiffs herein; that upon the service of this writ no further proceedings shall be had by said city under said resolution; and that the defendant named in said writ refrain from doing any act or thing and from trespassing or entering upon the property of the plaintiffs herein, or to show cause before this Court at a time and place to be specified in said writ why the defendant named in said writ and in this application should not be restrained and prohibited from any further proceeding in said action and matter.

Said application is made upon the grounds, and for the reasons, set forth in the affidavit annexed hereto, that the defendant, the City of Phoenix, has no jurisdiction to proceed in said matter.

J. B. WOODWARD,

Attorney for Plaintiffs. [1\*]

[Endorsements]: In the District Court of the United States in and for the District of Arizona. Julia Mosher Collins, William B. Lount, and Hattie L. Mosher, Plaintiffs, vs. City of Phoenix, a Municipal Corporation, Defendant. Application for Writ of Prohibition. Filed Nov. 3, 1919. Mose Drachman, Clerk. By Nat. T. McKee, Deputy, [2]

---

\*Page-number appearing at foot of page of original certified Transcript of Record.

In the District Court of the United States in and for  
the District of Arizona.

No. —.

JULIA MOSHER COLLINS, WILLIAM B.  
LOUNT, HATTIE L. MOSHER,  
Plaintiffs,

vs.

CITY OF PHOENIX, a Municipal Corporation.  
Defendant.

**Affidavit of Applicant for Writ of Prohibition.**

State of Arizona,  
County of Maricopa,—ss.

Hattie L. Mosher, being first duly sworn, on oath  
deposes and says:

I.

That this affidavit of applicant for writ of prohibition is made by affiant for herself and on behalf of her coplaintiffs, and the facts therein set forth are within the knowledge of affiant.

II.

That the defendant, the City of Phoenix, is a municipal corporation, created, organized, operating and existing as such under the provisions of Article XIII of the Constitution of the State of Arizona, and under the laws thereof relative to such organization of cities having a population of more than 3,500 people, and such cities reserving to themselves certain rights, is in effect within its corporate boundaries, an independent sovereignty bearing to this State a

similar relation to that which this State bears to the Federal Government, its Charter having by the initiative and referendum law of the State been adopted by the people of the City of Phoenix. [3]

### III.

That plaintiff, Julia Mosher Collins, is a resident and citizen of the City of Portland, County of Multnomah, State of Oregon;

And that plaintiff, William B. Lount, is a resident and domiciled in the County of Alameda, State of California;

And deponent Hattie L. Mosher is a resident and citizen of the City of Phoenix, County of Maricopa, and State of Arizona.

That for upward of forty-eight years, plaintiffs or their predecessors in interest, have been, and now are, the owners in fee, and in possession of the following described real estate, namely:

A strip of land 33 feet wide, of the value of \$35,000, extending from the east side of Center Street (according to the old town-site map of Phoenix, recorded in the office of the County Recorder of Maricopa County, State of Arizona, in Book One (1) of Maps at page Five (5), and running thence east 704 feet along the North side of the Section line between Sections 8 and 5, Township 1 North, Range 3 East, Gila and Salt River Base and Meridian in Maricopa County, Arizona, to a point; thence North 33 feet to a point; thence West 704 feet to a point; thence South 33 feet to the place of beginning.

### IV.

That the original town site of Phoenix was located



on the North half of said Section 8, and the North boundary line between said Sections 5 and 8, and that the predecessors in interest of plaintiffs subsequently received patent to the same, as recorded in the office of the Recorder of Deeds of Maricopa County, Arizona, June 23, 1874, at page 129, Book of Deeds. [4]

## V.

That plaintiffs now are, and for the past forty-eight years they, or their predecessors in interest, have been, the owners in fee, and in the undisturbed possession of, the following described real estate now situate within the boundaries of the City of Phoenix, County of Maricopa, State of Arizona, as follows:

Commonly known as the Lount Tract, extending from the intersection point of the section line on the north side of Van Buren Street, between Sections 5 and 8; and the east side of Center Street east to Second Street, a distance of 704 feet; thence north to Taylor Street; thence west to Center Street; thence south to the place of beginning;

That said strip of land described in Division III of this affidavit was, and is now, an integral and component part and parcel of said Lount Tract; that no part of said tract has by plaintiffs, or by any authorized agent of theirs ever been platted or in any manner conveyed or dedicated to public use as a highway or street.

## VI.

That plaintiffs, in their use, occupation and development of said property for mercantile and sales purposes, for themselves, and for the convenience of

their employees and tenants, have heretofore left thereon as an open space abutting on the north side of Van Buren Street certain paths and driveways in the said strip of land described in Division III of this affidavit for themselves for the uses and purposes aforesaid, and have connected same with certain other paths and driveways leading to other open spaces and driveways of said Lount Tract, and the use of same has, in the past, been allowed by the plaintiffs and they have never objected nor sought to restrain their neighbors or others of the public [5] from traveling over said open spaces which they had so provided for their own purposes as aforesaid, and in the enhancement of said tract and the development of their property interests therein, it has been in the past, and is now, considered desirable to keep said spaces open and all spaces in the said Lount Tract open and unobstructed so that any person may travel over the same, the same being a permissive right so to do, that has not heretofore been withdrawn by plaintiffs, and is and has been given without any intention on their part to dedicate said open space to public use other than as hereinbefore set forth.

#### VII.

That on the 23d day of July, 1919, said defendant, by a resolution of its Commissioners, No. 380, declaring its intention to improve certain portions of Van Buren Street, and declaring that bonds shall be issued to represent the cost and expense thereof, a copy of which resolution is hereto annexed and marked Exhibit "A," and made a part of this affidavit, wrongfully included in said proposed improvement all of



the strip of plaintiffs' land described in Division III of this affidavit in that: Said strip of land is an integral part and parcel of the said "Lount Tract" described in Division V of this complaint, and they and their predecessors in interest have for more than forty-eight years last past been the owners in fee and in the undisturbed possession of same; and that they have in no instance dedicated, or in any manner conveyed the same to public use; that the open space of said strip was so left for the use and purposes alone as hereinbefore set forth in Division VI of this affidavit;

That defendant, the City of Phoenix, by its action as aforesaid, is proceeding to take said strip of land for its own use and purposes without, first, proceeding to condemn [6] the same in the manner provided by the Statutes of Arizona, and in subdivision (e) Section 2 of Chapter 2 of the City Charter, which reads as follows:

"To acquire by purchase, condemnation or otherwise, within or without the city, such land and other property as may be necessary for the establishment, maintenance and operation of any public utility, or to provide for and effectuate any other public purpose; and to sell, convey, and dispose of the same for the common benefit."

That defendant is taking the same under a false and wrongful assumption that it is a public highway, and that it, as the City of Phoenix, is a distinct unit, empowered to take over, possess and control all property within its boundaries, without resort to the statutory requirements of the State of Arizona, legalizing and justifying such acquisitions;

That the taking of plaintiffs' property by this method is confiscation and a violation of the 14th amendment to the Constitution of the United States in that it is depriving plaintiffs of their property without due process of law, and will result in irreparable injury to plaintiffs;

That the City of Phoenix in its attempt to take possession of said strip of land is threatening to, and will, unless restrained by the process of this Court, change the width, arrangement and location of plaintiffs' paths and walks and driveways and destroy their utility and purposes for which they were planned and laid out by plaintiffs;

That the said defendant's possession of the property of plaintiffs described hereinbefore, and its proposed alleged improvements thereon, will entail upon plaintiffs a loss of not less than Six Thousand (\$6,000.00) Dollars; that the amount in controversy herein and for which plaintiffs [7] seek relief in this court is in excess of the value of Three Thousand (\$3,000.00) Dollars.

#### VIII.

Plaintiffs further allege: That on the 8th day of August, 1919, with the purpose of having the defendant desist from taking said strip of land described in Division III of this affidavit, without condemnation proceeding as required by the Statutes of Arizona and the City Charter of the City of Phoenix, they filed with the clerk of said City of Phoenix their protest, a copy of which is hereto annexed and marked Exhibit "B," and made a part of this affidavit; and again on the 17th day of October, 1919, they filed with

said City Clerk a protest against its awarding any contract for the improvement or doing of any act affecting said tract; a copy of which is hereto annexed and marked Exhibit "C."

IX.

That plaintiffs have no plain, speedy and adequate remedy in the premises either in law or in equity, and therefore apply to this Court for a writ of prohibition aforesaid directed to the defendant, the City of Phoenix, restraining and prohibiting it, its officers and agents, from proceeding under said Resolution No. 380, and from trespassing in, on or upon said strip of land, to wit:

"A strip of land 33 feet wide, extending from the east side of Center Street (according to the old town-site map of Phoenix, recorded in the office of the County Recorder of Maricopa County, State of Arizona, in Book One (1) of Maps at page Five (5), and running thence east 704 feet along the north side of the section line between sections 8 and 5, Township 1 North, Range 3 East, Gila and Salt River Base and Meridian in Maricopa County, Arizona, to a point; thence North 33 feet to a point; thence West 704 feet to a point; thence South 33 feet to the place of beginning";

without the consent of plaintiffs herein, and from making the improvements thereon as contemplated by defendant in [8] its published Resolution No. 380 of date July 23, 1919, and from doing any act or acts in furtherance of the purposes set forth in said resolution as affects this said land and from do-

ing any act whereby a lien or charge of any character in the nature of an improvement charge may be affixed to said strip of land, upon the ground that defendant had no jurisdiction to pass said resolution or to proceed thereunder, to occupy or trespass upon said land.

HATTIE L. MOSHER.

Subscribed and sworn to before me this 31st day of October, 1919.

J. B. WOODWARD,  
Notary Public.

My commission expires Feb. 16th, 1920.

[Endorsements]: In the District Court of the United States, in and for the District of Arizona, Julia Mosher Collins, William B. Lount, and Hattie L. Mosher, Plaintiffs, vs. City of Phoenix, a Municipal Corporation, Defendant. Affidavit of Applicant for Writ of Prohibition. Filed Nov. 3, 1919. Mose Drachman, Clerk. By Nat. T. McKee, Deputy.  
[9]

**Exhibit "A."**

**RESOLUTION No. 380.**

A resolution of the Commission of the City of Phoenix declaring its intention to improve certain portions of Van Buren Street in the City of Phoenix and determining that bonds shall be issued to represent the costs and expenses thereof, and declaring the work of improvement to be of more than local or ordinary public benefit, and that the costs of said work or improvement shall be assessed upon a certain district and providing that the proposed work

or improvement shall be performed under Title VII Chapter XIII, Revised Statutes of Arizona 1913 Civil Code, and amendments thereto.

BE IT RESOLVED BY THE COMMISSION OF  
THE CITY OF PHOENIX:

Section 1.

That the public interest and convenience require, and that it is the intention of the Commission of the City of Phoenix, to order the following work to be performed, to wit:

1. That the roadway of Van Buren Street between the east line of Central Avenue and the west line of Sixteenth Street, including the intersections of all streets and alleys (excepting the north one-half of the roadway of Van Buren Street between a point 33.66 feet west of the center line of Twelfth Street in the City of Phoenix and the west line of Sixteenth Street, and the north one-half of the roadway of Van Buren Street, between the east line of Fifth Street and the Center line of Seventh Street, and the north one-half of the roadway of Van Buren Street between the center line of Ninth Street and a point one-hundred and seventy-five (175) feet east of the east line of Ninth Street, and the south one-half of the roadway of Van Buren Street between center line of Seventh Street and the center line of Eighth Street, and the south one-half of the roadway of Van Buren Street between a point two hundred (200) feet west of the west line of Twelfth Street and the center line of Twelfth Street and excepting also [10] the intersections of Fourth and Fifth Streets, be graded and paved with bitulithic with bituminous concrete



base as per Specification No. 20B.

2. That all private drives on both sides of Van Buren Street between the east line of Central and the west line of Twelfth Street, in the City of Phoenix, be graded and paved to a depth of five (5) inches with cement concrete as per Specification No. 30A.

3. That combined cement concrete curb and gutter be constructed on both edges of the roadway of Van Buren Street between the east line of Central Avenue and the west line of Twelfth Street (excepting at the intersection of streets, alleys and private drives and excepting also the north edge of the roadway of Van Buren Street between the east line of Fifth Street and the west line of Seventh Street, and the south edge of the roadway of Van Buren Street, between the east line of Seventh Street and the West line of Eighth Street, and the south edge of the roadway of Van Buren Street between the west line of Twelfth Street and a point two hundred (200) feet west of the west line of Twelfth Street, and the north edge of the roadway of Van Buren Street between the east line of Ninth Street and a point one hundred and seventy-five (175) feet east of the east line of Ninth Street, as shown on the plans.

That combined cement concrete curb and gutter be constructed as follows:

Along both edges of the roadway of Van Buren Street on both sides of Second Street, Third Street and Eleventh Street respectively; along the south edge of the roadway of Van Buren Street, on both sides of Sixth Street; along the south edge of the roadway of Van Buren Street on the west side of

Seventh Street; along the south edge of the roadway of Van Buren Street on the east side of Eighth Street; along the north edge of the roadway of [11] Van Buren on both sides of Godfrey Street, along both edges of the roadway of Second Street, Third Street and Eleventh Street, on both sides of Van Buren Street, along both edges of the roadway of Sixth Street on the south side of Van Buren Street; along the west edge of the roadway of Seventh Street on the south side of Van Buren Street; along the east edge of the roadway of Eighth Street on the south side of Van Buren Street; along both edges of the roadway of Godfrey Street on the north side of Van Buren Street as shown on the plans.

4. That cement curb be constructed along the edges of all alleys and private drives and along both edges of the roadway of Van Buren Street on both sides of First Street, and both edges of the roadway of First Street on both sides of Van Buren Street, both edges of the roadway of Ninth Street on south side of Van Buren Street, on south edges of the roadway of Van Buren Street on both sides of Ninth Street; on the west edge of the roadway of Ninth Street; on north side of Van Buren Street; and on the north edge of the roadway of Van Buren Street on west side of Ninth Street, as shown on the plans.

5. That cement gutters be constructed across all alleys and private drives and across the roadway of Third Street on both sides of Van Buren Street and across the roadway of Godfrey Street on the north side of Van Buren Street, as shown on the plans.

6. That one storm water manhole be constructed at each of the following locations on Van Buren Street near the east line of Second Street; near the east line of Sixth Street; near the center line of Eighth Street; approximately three hundred (300) feet east of the east line of Ninth Street; near the east line of Eleventh Street; as shown on the plans.

7. That gutter inlets of the number and location be constructed as follows: [12]

First Street, two (2); Second Street, two (2); Sixth Street, two (2); Eighth Street, three (3); approximately three hundred (300) feet east of east line of Ninth Street, two (2) and Eleventh Street, two (2); as shown on the plans.

That cement concrete stand-pipes of the number and location be constructed as follows:

Sixth Street, two (2); Seventh Street, four (4); Ninth Street, two (2); Eleventh Street, two (2); Twelfth Street, two (2); Sixteenth Street, one (1); and gates be placed in them to control the flow of water, as shown on the plans.

9. That corrugated iron pipe of the size and location be laid as follows:

Twelve (12) inches in diameter across the roadway of Van Buren Street on the east side of Seventh Street; Ninth Street; and Eleventh Street, and across the roadway of Sixth Street; Ninth Street; Eleventh Street, on the south side of Van Buren Street, as shown on the plans.

Fifteen (15) inches in diameter across the roadway of Van Buren Street, on the west side of Seventh



Street; Twelfth Street and Sixteenth Street, as shown on the plans.

That cement concrete pipe of the size to fit the aforementioned corrugated iron pipe, be laid from the stand-pipes and corrugated iron pipes to points six (6) feet back of the property lines and between gutter inlets and storm-water manholes and across all drive ways, as shown on the plans.

11. That street signs of the number and location be set as follows: First Street, four (4); Second Street, eight (8); Third Street, eight (8); Sixth Street, four (4); Seventh Street, four (4); Eighth Street, four (4); Ninth Street, two (2); Eleventh Street, eight (8); Godfrey Street, four (4); as shown on the plans.

12. That survey monument covers furnished by the City be [13] set at the following locations: First Street, two (2); Second Street, two (2); Third Street, two (2); Sixth Street, one (1); Seventh Street, two (2); Eighth Street, one (1); Ninth Street, one (1); Eleventh Street, one (1); Godfrey Street, One (1); Twelfth Street, two (2); Thirteenth Street, one (1); Fourteenth Street, one (1); Fifteenth Street, one (1); as shown on the plans.

13. That the roadway of intersecting streets and alleys be graded from the edge of the aforementioned pavement not to exceed ten (10) per cent until they meet the original surface.

All of the above work or improvement to be done in accordance with that certain set of plans approved and adopted by the Commission of the City of Phoenix on the 11th day of June, 1919, and on file in

the office of the City Engineer in Book Five of Street Improvement Plans on Pages 85 to 109, inclusive, and in further accordance with the following specifications:

Standard Specification of the City of Phoenix, Numbers 19, 21, 22, 24, 20B, 28 and 30A.

All of which above specifications are on file in the office of the City Clerk of the City of Phoenix. Said plans and specifications are hereby referred to for a more particular description of said work and are hereby made a part hereof.

Reference is hereby made to the Bitulithic License Agreement of Warren Brothers Company of Boston, Mass., dated April 2d, 1918, and on file in the office of the City Clerk of the City of Phoenix.

## Section 2.

That the said contemplated work or improvement, in the opinion of the Commission, is of more than local or ordinary public benefit, and that the said Commission hereby makes the costs and expenses of said work chargeable upon a district, and hereby declares that the district in said City of Phoenix, benefited by the said work or improvement, and to be assessed to pay the costs and expenses thereof, is described as follows: [14]

The south one-half of Blocks 1, 14, 15, 28 and 29, Churchill Addition.

North one-half of Blocks 1, 2, 3, 4, 5, 6, and 7, Original Townsite.

Lots 35 to 51 inclusive, Monte Vista Place.

Lots 2, 3 and 4, Block 2, Dennis Addition.

Lots 1, 2, 3, 4 and 5, Sub. of Lot 5, Block 2, Dennis Addition.

Lots 1, 3 and 4, of Block 3, Dennis Addition.

Lots 3, 4, 10, 11, 12, 13, 14 and part of Lot 9, Marston Heights.

Lots 4 and 5, Block 1, Murphy Addition.

North one-half of Block 2, Murphy Addition.

Lots 1 to 10 inclusive, Porter and Baxter Sub.

North one-half of Blocks 1, 2, 3, and 4, Collins Addition.

Reference is hereby made to Book One of Assessment District Diagrams, Pages 27 to 34, on file in the office of the City Engineer of the City of Phoenix, for a more complete and detailed description of said district.

### Section 3.

The said Commission finds that public convenience requires serial bonds shall be issued to represent the costs and expenses of such work or improvement, and said Commission determines that serial bonds shall be issued to represent each assessment of Twenty-five (\$25.00) Dollars or more for the costs and expenses of said work or improvement. Said serial bonds shall extend over a period ending nine (9) years from and after the second day of January next succeeding the date of said bonds and an even annual proportion of the principal sum thereof shall be payable by coupon on the second day of January every year after their date until all is paid and the interest shall be payable semi-annually by coupon on the second day of January and July, respectively of each year, at the rate of six (6) per cent per annum, on all

sums unpaid, until the whole of said principal sum and interest are paid. [15]

Section 4.

That these improvements shall be made, and all the proceedings therein shall be taken; that the Superintendent of Streets shall post notices thereof; that the City Clerk shall certify to the passage of this Resolution of Intention and shall cause the same to be published in the "Arizona Gazette," a daily newspaper published and circulated in the City of Phoenix and hereby designated for that purpose; that the City Engineer shall prepare duplicate diagrams of the district hereinbefore described in Section 2 of this Resolution of Intention, to be assessed to pay the costs and expenses thereof, under and in accordance with the provisions of Title VII, Chapter XIII, Revised Statutes of Arizona, 1913 Civil Code, and subsequent acts amendatory thereto.

Passed by the Commission of the City of Phoenix this 23d day of July, 1919.

S. W. BARNETT,  
Vice Chairman.

I hereby certify that the above and foregoing Resolution No. 380, was duly passed by the Commission of the City of Phoenix at a meeting held in the Commission Chamber in the City Hall, July 23d, 1919, at which meeting a quorum was present thereat, voting in favor thereof.

FRANK THOMAS,  
City Clerk.

Date of Pub. July 29-30-31, Aug. 1-2.

[Endorsement]: Exhibit "A." [16]

**Exhibit "B."**

**PROTEST.**

The undersigned respectfully protest to the City of Phoenix against the further publication, or in any manner, enforcement of its Resolution No. 380, dated July 23, 1919, as affects their land described as follows:

A strip of land 33 feet wide, extending from the east side of Center Street, (according to the old town-site map of Phoenix, recorded in the office of the County Recorder of Maricopa County, Arizona, in Book 1 of Maps, at page 5), and running thence east 704 feet along the north side of the section line between Sections 8 and 5, Township 1 North, Range 3 East of the Gila and Salt River Base and Meridian, in Maricopa County, Arizona, to a point, thence north 33 feet to a point, thence west 704 feet to a point, thence south 33 feet, to the place of beginning, which property has been owned and in the undisputed possession of the undersigned, and their immediate grantors of same, for upwards of 48 years, and is of the present value of \$35,000.00 and upwards; this protest is based upon the following facts, and for the following reasons:

1. That it is the apparent and declared purpose of the City of Phoenix, as expressed in said Resolution No. 380, so far as the above-described strip of land is concerned and included, to assume possession, ownership and control of same, as an integral part and portion of Van Buren Street for city uses and purposes, and public use, without condemnation pro-



cedure as required by the Statutes of Arizona, and as contemplated by the subdivision 2 of Section 2, of Chapter 2, of its City Charter.

2. Said Resolution No. 380 is an unlawful and declared intent to take plaintiffs' private property for a public use without compensation therefor as conditioned to be made by the laws of the State of Arizona.

3. The taking of the said above described land is [17] inhibited by Section 4, Article 2 of the State Constitution of the State of Arizona.

4. The taking of said property is inhibited by the Fourteenth Amendment of the Constitution of the United States, in that, it is depriving plaintiffs of their property without due process of law.

5. It is an unlawful and declared purpose and act of taking plaintiffs' property without compensation, and will impose, in addition thereto, upon them, a fixed, resultant burden, of upwards of \$6,000.00.

W. B. LOUNT,

By F. E. WARREN,

Att'y in Fact.

JULIA MOSHER COLLINS,

By HATTIE L. MOSHER,

Att'y in Fact.

H. L. MOSHER.

[Endorsement]: Exhibit "B." [18]

**Exhibit "C."**

**PROTEST.**

The undersigned respectfully protest to the City of Phoenix against its awarding any contract for the

improvement of or doing any act affecting the following land, namely:

A strip of land 33 feet wide, extending from the east side of Center Street (according to the old town-site map of Phoenix, recorded in the office of the County Recorder of Maricopa County, Arizona, in Book 1 of Maps, at page 5) and running thence east 704 feet along the north side of the Section line between Sections 8 and 5, Township One North, Range 3 East of the Gila and Salt River Base and Meridian, in Maricopa County, Arizona, to a point; thence North 33 feet to a point; thence west 704 feet to a point; thence south 33 feet to the place of beginning, for the reasons assigned in their protest to City Resolution No. 380, dated July 23, 1919, filed with the City Clerk of Phoenix August 8, 1919.

This notice is made in pursuance of Paragraph 1916 of the Revised Statutes of Arizona, 1915, and amendments thereto.

Dated: Phoenix, Arizona, October 17, 1919.

W. B. LOUNT,

By F. E. WARREN,

His Attorney in Fact.

JULIA MOSHER COLLINS,

By HATTIE L. MOSHER,

Her Attorney in Fact.

H. L. MOSHER.

[Endorsement]: Exhibit "C." [19]

In the District Court of the United States in and for  
the District of Arizona.

No. 380—PHOENIX.

JULIA MOSHER COLLINS, WILLIAM B.  
LOUNT and HATTIE L. MOSHER,  
Plaintiffs,

vs.

CITY OF PHOENIX, a Municipal Corporation,  
Defendant.

**Answer.**

Comes now the defendant in the above-entitled cause and in answer to the application for the writ of prohibition herein admits, denies and alleges as follows:

It admits that it is a municipal corporation as alleged in Paragraph II of the plaintiffs' affidavit.

It admits the residence of the plaintiffs, as stated in Paragraph III of said affidavit.

It denies that plaintiffs, or their predecessors in interest, have been for forty-eight years and now are the owners in fee of the strip of land thirty-three feet wide described and set forth in Paragraph III of said affidavit.

It denies that plaintiffs, as alleged by them in Paragraph V of said affidavit, have been and are the owners in fee and in the undisturbed possession of said strip of land for the past forty-eight years or that said strip of land is now an integral or com-



ponent part or parcel of the tract described therein as the Lount Tract.

It states that, contrary to the statement in Paragraph V of said affidavit, said tract has been platted and [20] dedicated to the public use as a highway or street, as hereinafter set forth.

It denies that the plaintiffs have used, occupied or developed said strip for mercantile or sales purposes for themselves or for the convenience of their employees and tenants or that they have left said strip of land or any part of it as an open space and for certain paths and driveways thereon for themselves, or has connected said strip of land with certain other paths and driveways leading to other open spaces and driveways for their private use and purpose or that the use by the public of said strip of land has been a mere permissive right given without any intention on their part or the part of their predecessors in interest to dedicate the same to public use.

But in this behalf the defendant charges the facts to be as follows:

That the said strip of land lies along and is contiguous to the section line between Sections 5 and 8 of Township 1 North, Range 3 East, Gila and Salt River Base and Meridian.

That, ever since the time the title to said strip of land was acquired from the Government by the predecessors in interest of plaintiff, said strip has been recognized, used and occupied by the public, with the full knowledge, acquiescence and consent of the plaintiffs and their predecessors in interest, as a public road, highway or street.

That, on the 10th day of January, 1888, there was filed with the County Recorder of Maricopa County, Arizona, a plat of the quarter-section in which said strip of land is included, to wit, the Southeast quarter of Section 5, Township 1 [21] North, Range 3 East, of the Gila and Salt River Base and Meridian, as an addition to the City of Phoenix, and that a copy of said map so filed as aforesaid is hereto annexed, marked Exhibit "A" and made a part hereof. That said addition, as set forth in said map, was then and has ever since been known as Churchill's Addition to the City of Phoenix.

Defendant further alleges that, by Ordinance No. 192 of the said City of Phoenix, approved February 27th, 1895, said quarter-section, including the strip of land in question, was annexed to and included within the corporate limits of the City of Phoenix, a copy of which said ordinance is hereto attached, marked Exhibit "B" and made a part hereof. That ever since the passage of said ordinance the said quarter-section, including the strip of land set forth and described in plaintiffs' affidavit has been and now is a part of and included within the corporate limits of the City of Phoenix.

Defendant further alleges that, on the 7th day of September, 1898, the Common Council of the said City of Phoenix adopted an ordinance known as Ordinance No. 275, which said ordinance adopted an official plat of the resurvey of said Churchill's Addition to the City of Phoenix, which included, as aforesaid, said strip of land, and on which said plat there appeared said strip of land as a part of the street

known as Van Buren Street. That in said ordinance it was declared that all streets, including said Van Buren Street and said strip of land as a part thereof, were declared to be public and dedicated to public use and benefit at large and requiring, under penalty, all persons to conform to said map or plat. That a copy of said plat so adopted is hereto annexed marked Exhibit "C" and made a part hereof. That ever since the annexation of said Churchill's Addition said strip of land has been used and occupied by the public and has been recognized by the City of Phoenix as a part of and parcel of Van Buren Street, and no part [22] or parcel thereof has been used by plaintiffs except as part of the public.

Defendant further alleges that the plaintiffs herein and their predecessors in interest have acquiesced in the acts and things hereinbefore set forth relating to the platting of said addition and the annexation of the same and have acquiesced in the use of said strip of land, first as a highway and then, after the annexation of said land as a part of said City, has ever since acquiesced in the possession and control of the same by said City as a part and parcel of Van Buren Street in said City, and has ever since acquiesced in its use as a public street.

Defendant further alleges that, for more than twenty years prior to the institution of this suit, the said strip of land has been used and occupied as a public highway and street of said City and said City has been in the open, notorious, peaceable, adverse and exclusive possession and control of said strip of

land as a part of said street, devoted and dedicated to public use.

Defendant further denies that it is depriving plaintiffs or attempting to deprive plaintiffs of any property belonging to them without due process of law, or that any act or thing complained of will result in irreparable or any injury to plaintiffs.

It further denies that it will, in any way, change the width, arrangement and location of any paths, walks or driveways or destroy the utility and purpose of any walks, paths and driveways planned and laid out by plaintiffs.

It denies that, by the proposed improvements mentioned by plaintiffs in their affidavit or by any improvements proposed [23] to be erected on said strip of land, plaintiffs will suffer a loss of Six Thousand Dollars, or any loss whatsoever.

WHEREFORE defendant, having fully answered, prays that it be dismissed hence with its costs.

RICHARD E. SLOAN,  
Attorney for Defendant.

[Endorsements]: No. 380—Phoenix. In the District Court of the United States, District of Arizona. Julia Mosher Collins et al., Plaintiffs, vs. City of Phoenix, Defendant. Answer. Filed Nov. 22, 1919. Mose Drachman, Clerk. By Nat T. McKee, Deputy.  
[24]

# PLAT OF THE SURVEY OF THE CHURCHILL ADDITION TO THE CITY OF PHOENIX.



Filed and recorded at the request of  
CLARK CHURCHILL JUNIOR, at twelve  
A.M.  
Recorded in book 1 of maps page 15

(Exhibit "A")





**Exhibit "B."**

ORDINANCE No. 192.

An ordinance annexing to the City of Phoenix, in the County of Maricopa, Territory of Arizona, the land, property and territory, situated, lying and being in said County and Territory, to wit: The southeast quarter ( $\frac{1}{4}$ ) of section five (5), in township one (1) north, range three (3) east of Gila and Salt River Base and Meridian.

Whereas, a petition has been filed with the City Recorder, and the Common Council of the City of Phoenix, signed by the owners of more than one-half in value, according to the last assessment in Maricopa County, Territory of Arizona, hereinafter mentioned, to wit: The southeast quarter ( $\frac{1}{4}$ ) of section five (5), in township one (1) north, range three (3) east, Gila and Salt River Base and Meridian, according to the United States survey, and commonly known as the Churchill's addition, to the City of Phoenix, and lying contiguous thereto, and not embraced within its limits, and asking that said tract of land, property and territory, be annexed to said city in conformity with the provisions of Section one, of an Act entitled, "An act authorizing incorporated cities to extend and enlarge their limits," approved April 12th, 1893.

Now, therefore, the Common Council of Phoenix do ordain as follows:

Section 1. That the said property and tract of land and territory, hereinbefore mentioned, and described, be, and the same is hereby annexed to, made

a part of, and included within the corporate limits of the City of Phoenix, County of Maricopa, Territory of Arizona, and the same, and every part thereof shall hereafter be a part and parcel of said city, for all purposes whatsoever.

Sec. 2. This ordinance shall be in force and effect from and after its passage and publication according to law. [26]

Passed by the Common Council this 27th day of February, A. D. 1895.

Approved the 27th day of February, A. D. 1895.

J. D. MONIHON,  
Mayor.

Attest: ED. SCHWARTZ,

City Recorder.

(Filed as part of Defendant's Answer.) [27]



OFFICIAL PLAT  
RESOLUTION OF  
CHURCHILLS ADDITION  
IN THE CITY OF PHOENIX  
MARICOPA COUNTY  
ARIZONA TERRITORY.

Being a part of the one Quarter (SE 1/4) of Section Five (5) Township  
12 N. Range Three (3) East of the Gila and Salt River Base  
and Meridian.

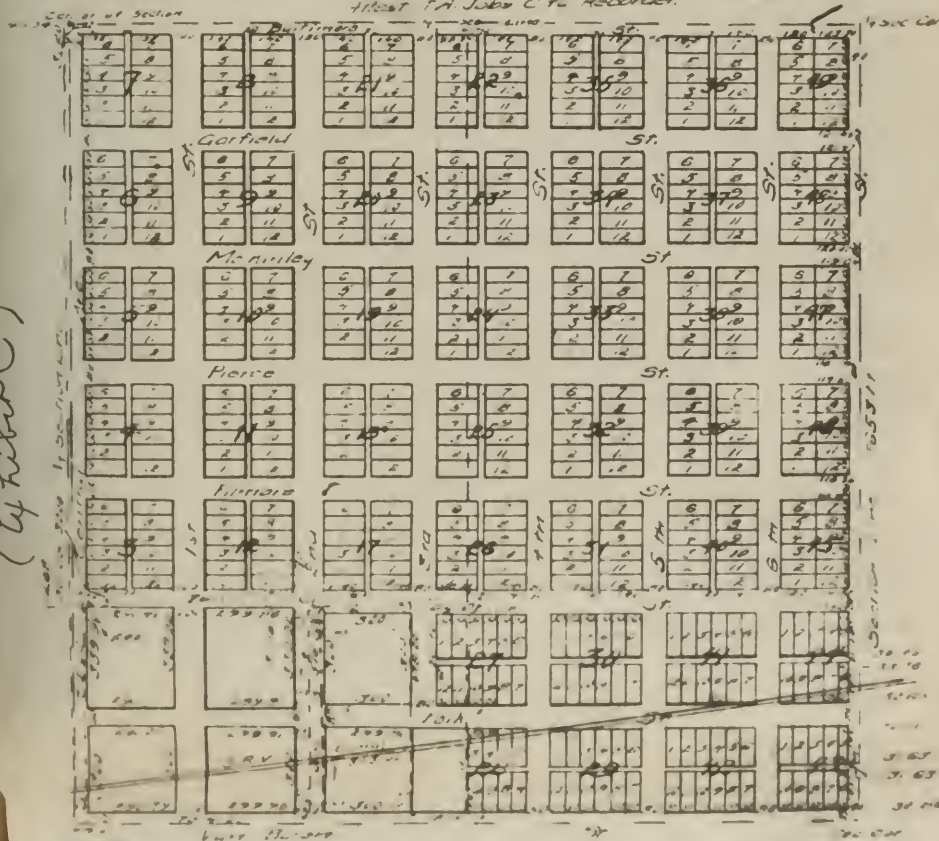
### DEDICATION

The annexed plat of Phoenix lots streets, avenues and alleys being  
all of the South East quarter (SE 1/4) of Section Five (5) Township one (1)  
North Range three (3) East of the Gila and Salt River Base and Meridian  
is hereby dedicated as the official and complete plat of the resolution of  
the City of Phoenix to the City of Phoenix Maricopa County Arizona Territory  
showing streets and lots and giving dimensions of same also the numbers  
of each block and lot and the widths of all streets and avenues, the  
width of all alleys, and the plat is a correct and true plat of said resolution  
of the City of Phoenix Addition and the same is hereby approved and adopted  
by the City of Phoenix and the same is hereby dedicated to the public according to ordinance No. 215  
of the City of Phoenix AT

Witness the hand of the Common Council of the City of Phoenix AT this  
day these presents to be signed by the Mayor of said City and in the  
presence of a majority of the City Council of said City and the City of  
Phoenix Arizona.

Witness the hand of the Mayor of the City of Phoenix AT this  
day the City of Phoenix by J. D. Adams Mayor.

Witness the hand of the City Recorder (Seal)



(Exhibit "C")

Approved September 10th 1898 J. D. Adams Mayor  
City of Phoenix Arizona

Surveyed by J. D. Adams  
City of Phoenix Arizona



In the District Court of the United States, in and  
for the District of Arizona.

No. EQ.—90.

JULIA MOSHER COLLINS, WILLIAM B.  
LOUNT, HATTIE L. MOSHER,  
Plaintiffs,

vs.

CITY OF PHOENIX, a Municipal Corporation,  
Defendant.

### **Findings and Judgment.**

The above-entitled cause came on to be heard this 12th day of March, 1920, upon the sworn complaint of plaintiffs and the answer of defendant filed herein, J. B. Woodward, Esq., appearing for the plaintiffs, and Richard E. Sloan, Esq., and J. E. Nelson, Esq., for the defendant;

Thereupon the Court heard the evidence offered in behalf of the plaintiffs and also the evidence offered in behalf of the defendant, and having heard all the testimony and evidence offered in behalf of the respective parties, the said cause was thereupon submitted to the Court for his decision, and the Court being fully advised in the premises does now find as follows:

1. That the allegations in plaintiffs' complaint, that they are, and for the past forty-eight years they or their predecessors in interest have been, the owners in fee and in the undisturbed possession of the real estate described and set forth in their said

complaint; and the further allegations that said land was, at the time of the commencement of this action or is now an integral and component part and parcel of the tract described in said complaint as the "Lount Tract," and that no part of said tract has been by plaintiffs or by any authorized agent of theirs ever been dedicated to public use as a highway or street, are each not [29] sustained by the evidence but are each shown by the evidence to be untrue.

2. That for more than twenty years prior to the commencement of this action, the defendant, City of Phoenix, has been in open, notorious, peaceable, adverse and exclusive possession and control of the strip of land in controversy, claiming, using and occupying the same as a public highway and street of said City.

3. That the said strip of land was, more than twenty years prior to the commencement of this action, dedicated by plaintiffs and their predecessors in interest to the public as a public highway and street of said City, which said dedication was duly accepted by the public and by the City of Phoenix as such public highway and street of said City; and that the said strip of land ever since said dedication, and acceptance thereof, has been and now is a part of Van Buren Street of said City of Phoenix.

4. That neither the plaintiffs nor their predecessors in interest have been the owners of or in the possession of said strip of land at any time during the period of at least twenty years prior to the commencement of this action.

As conclusions of law from the foregoing facts, the Court finds:

First: That the defendant is in the lawful possession and control of said strip of land as a part and parcel of said Van Buren Street, and possesses full power and authority to improve the same and otherwise to deal with the same as a public highway and street of said City.

Second: That the plaintiffs, and neither of them, have any right, title and interest in and to said land, or any part thereof.

Third: That the plaintiffs are not entitled to recover in this action. [30]

Fourth: That the defendant is entitled to a judgment against said plaintiffs for its costs.

WHEREFORE, it is hereby ORDERED, ADJUDGED AND DECREED that the plaintiffs take nothing by this action and that the defendant recover its costs herein expended, taxed at the sum of \$71.60.

Done in open court this 12th day of March, 1920.

DAVID P. DYER,  
Judge.

[Endorsements]: No. Eq. 90. In the District Court of the United States, in and for the District of Arizona. Julia Mosher Collins, William B. Lount, Hattie L. Mosher, Plaintiffs, v. City of Phoenix, a Municipal Corporation, Defendant. Findings and Judgment. Filed March 13, 1920. C. R. McFall, Clerk. By Clyde C. Downing, Deputy Clerk. [31]

In the District Court of the United States, in and for  
the District of Arizona.

E.-90.—IN EQUITY.

JULIA MOSHER COLLINS, WILLIAM B.  
LOUNT, HATTIE L. MOSHER,

Plaintiffs,

vs.

CITY OF PHOENIX, a Municipal Corporation,  
Defendant.

**Petition for Appeal.**

To the Honorable WILLIAM H. SAWTELLE,  
District Judge for the District of Arizona:

The above-named plaintiffs, feeling themselves aggrieved by the findings of fact and decree made and entered in this cause on the 12th day of March, 1920, do hereby appeal from said findings and decree to the Circuit Court of Appeals for the Ninth Judicial Circuit, for the reasons specified in the assignment of errors, which is filed herewith, and pray that their appeal be allowed and that citation issue as provided by law, and that a transcript of the record, proceedings and papers upon which said decree was based, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Ninth Judicial Circuit, sitting at San Francisco, California.

And your petitioners further pray that the proper order touching the security to be required of them to perfect their appeal be made.

J. B. WOODWARD,  
Attorney for Petitioners.



[Endorsements]: E.-90—In Equity. In the District Court of the United States in and for the District of Arizona. Julia Mosher Collins, William B. Lount, Hattie L. Mosher, Plaintiffs, v. City of Phoenix, a Municipal Corporation, Defendant. Petition for Appeal. Filed Mch. 31, 1920. C. R. McFall, Clerk. By Clyde C. Downing, Deputy Clerk.

Service of copy accepted this March 31st, 1920.

JAMES E. NELSON,  
Atty. for Defendant. [32]

---

In the District Court of the United States, in and for  
the District of Arizona.

E.—90.

JULIA MOSHER COLLINS, WILLIAM B.  
LOUNT, HATTIE L. MOSHER,

Appellants,

vs.

CITY OF PHOENIX, a Municipal Corporation,  
Appellee.

**Amended Assignment of Errors.**

Come now Julia Mosher Collins, William B. Lount and Hattie L. Mosher, appellants herein, and in connection with their petition for appeal, assign the following errors:

FIRST: The Court erred in finding the following facts:

“1. That the allegations in plaintiffs’ complaint, that they are, and for the past forty-

eight years they or their predecessors in interest have been, the owners in fee and in the undisturbed possession of the real estate described and set forth in their said complaint; and the further allegations that said land was, at the time of the commencement of this action or is now an integral and component part and parcel of the tract described in said complaint as the 'Lount Tract,' and that no part of said tract has been by plaintiffs or by any authorized agent of theirs ever been dedicated to public use as a highway or street, are each not sustained by the evidence but are each shown by the evidence to be untrue.

2. That for more than twenty years prior to the commencement of this action, the defendant, City of Phoenix, has been in open, notorious, peaceable, adverse and exclusive possession and control of the strip of land in controversy, claiming, using and occupying the same as a public highway and street of said City. [33]

3. That the said strip of land was, more than twenty years prior to the commencement of this action, dedicated by plaintiffs and their predecessors in interest to the public as a public highway and street of said city, which said dedication was duly accepted by the public and by the City of Phoenix as such public highway and street of said City; and that the said strip of land ever since said dedication, and acceptance thereof, has been and now is a part of Van Buren Street of said City of Phoenix.

4. That neither the plaintiffs nor their predecessors in interest have been the owners of or in the possession of said strip of land at any time during the period of at least twenty years prior to the commencement of this action."

SECOND: The Court erred in finding the following conclusions of law based on the above and foregoing findings of fact:

"First: That the defendant is in the lawful possession and control of said strip of land as a part and parcel of said Van Buren Street, and possesses full power and authority to improve the same and otherwise to deal with the same as a public highway and street of said city;

Second: That the plaintiffs, and neither of them, have any right, title and interest in and to said land, or any part thereof;

Third: That the plaintiffs are not entitled to recover in this action.

Fourth: That the defendant is entitled to a judgment against said plaintiffs for its costs."

THIRD: The Court erred in adjudging that the plaintiffs take nothing by their action and that the defendant recover its costs.

FOURTH: The judgment and findings are against the [34] manifest weight of evidence.

FIFTH: The judgment and findings are contrary to law.

WHEREFORE, appellant prays that the judgment and decree of the District Court of the United States in and for the District of Arizona, made and

entered on the 12th day of March, 1920, may be reversed.

J. B. WOODWARD,  
Attorney for Appellants.

[Endorsements]: E.—238. In the District Court of the United States, in and for the District of Arizona. Julia Mosher Collins, William B. Lount, Hattie L. Mosher, Appellants, vs. City of Phoenix, a Municipal Corporation, Appellee. Amended Assignment of Errors. Filed April 26, 1920. C. R. McFall, Clerk. By Clyde C. Downing, Deputy Clerk.

Service of copy accepted this April 26, 1920.

RICHARD E. SLOAN,  
Atty. for Deft. [35]

---

In the District Court of the United States, in and for  
the District of Arizona.

E.—90—IN EQUITY.

JULIA MOSHER COLLINS, WILLIAM B.  
LOUNT, HATTIE L. MOSHER,

Plaintiffs,

vs.

CITY OF PHOENIX, a Municipal Corporation,  
Defendant.

**Order Allowing Appeal and Fixing Bond.**

This matter coming on for hearing this — day of April, 1920, on petition of Julia Mosher Collins, William B. Lount and Hattie L. Mosher, plaintiffs herein, for an order allowing their appeal;

IT IS HEREBY ORDERED that the appeal in the above-entitled matter to the United States Circuit Court of Appeals for the Ninth Judicial Circuit be, and the same is hereby allowed as prayed, upon petitioners filing a bond in the sum of \$500.00 with sufficient surety, conditioned as required by law, for the payment of the costs of such appeal.

Done in open court this 12th day of April, 1920.

WM. H. SAWTELLE,  
Judge of the District Court of the United States for  
the District of Arizona.

E.—90—In Equity. In the District Court of the United States, in and for the District of Arizona. Julia Mosher Collins, William B. Lount, Hattie L. Mosher, Plaintiffs, vs. City of Phoenix, a Municipal Corporation, Defendant. Order Allowing Appeal and Fixing Bond. Filed April 12, 1920. C. R. McFall, Clerk United States District Court for the District of Arizona. [36]

---

In the District Court of the United States, in and for  
the District of Arizona.

E.—90.

JULIA MOSHER COLLINS, WILLIAM B.  
LOUNT, HATTIE L. MOSHER,  
Appellants,

vs.

CITY OF PHOENIX, a Municipal Corporation,  
Appellee.

**Bond on Appeal.**

KNOW ALL MEN BY THESE PRESENTS: That we, Julia Mosher Collins, William B. Lount, and Hattie L. Mosher, as principals, and H. J. Brazee and F. E. Warren, as sureties, are held and firmly bound unto the City of Phoenix, a Municipal Corporation, in the full and just sum of \$500.00, to be paid to the said City of Phoenix, its certain attorneys, executors, administrators or assigns; to which payment well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 23d day of April, A. D. 1920.

WHEREAS, at a late term of the District Court of the United States for the District of Arizona, in a suit pending in this Court between Julia Mosher Collins, William B. Lount and Hattie L. Mosher, as plaintiffs, and City of Phoenix, a Municipal Corporation, as defendant, a judgment was rendered against the said Julia Mosher Collins, William B. Lount and Hattie L. Mosher, plaintiffs, for the possession and ownership of certain land, and for \$71.60 costs, and the said plaintiffs, Julia Mosher Collins, William B. Lount and Hattie L. Mosher having obtained [37] an appeal to the United States Circuit Court of Appeals for the Ninth Judicial Circuit of the United States, which appeal was allowed, to reverse the judgment of the aforesaid suit;

Now, the conditions of the above obligation are such that if the said Julia Mosher Collins, William B.



Lount and Hattie L. Mosher shall prosecute their appeal to effect, and will pay the amount of said judgment and answer all damages and costs if they fail to make their plea good, then the above obligation is to be void; else to remain in full force and virtue.

(Signed) JULIA MOSHER COLLINS.

By HATTIE L. MOSHER,

Atty. in Fact.

WILLIAM B. LOUNT,

By F. E. WARREN,

Atty. in Fact.

HATTIE L. MOSHER,

Principals.

H. J. BRAZEE,

F. E. WARREN,

Sureties.

[Endorsements]: E.—90. In the District Court of the United States, in and for the District of Arizona. Julia Mosher Collins, William B. Lount, Hattie L. Mosher, Appellants, vs. City of Phoenix, a Municipal Corporation, Appellee. Bond on Appeal. Approved Richard E. Sloan, E. G. Scott. Approved and Filed April 27, 1920. C. R. McFall, Clerk. By Clyde C. Downing, Deputy Clerk. [38]

In the District Court of the United States, in and for  
the District of Arizona.

E.—90.

JULIA MOSHER COLLINS, WILLIAM B.  
LOUNT, HATTIE L. MOSHER,

Plaintiffs,

vs.

CITY OF PHOENIX, a Municipal Corporation,  
Defendant.

**Statement of Evidence.**

This cause having duly come on for trial on the  
12th day of March, 1920, and Sam R. Criswell having  
been duly sworn as reporter to take down the testi-  
mony adduced in shorthand and transcribe the same  
to longhand, the following testimony was thereupon  
adduced:

**Testimony of Hattie L. Mosher, for Plaintiff.**

HATTIE L. MOSHER, a witness called on behalf  
of plaintiff, being duly sworn, testified as follows on  
direct examination:

My name is Hattie L. Mosher. Julia Mosher Col-  
lins is my daughter and William B. Lount is my  
brother. William B. Lount resides in Oakland and  
my daughter resides in Portland, Oregon, and they  
were so residing at the time this action was brought.  
I reside here. Samuel D. Lount was my father. I  
have a deed from B. L. Conyers and Isabel Conyers  
to Samuel D. Lount, dated September 21st, 1881, filed

(Testimony of Hattie L. Mosher.)

for record in the Recorder's Office of Maricopa County, September 21st, 1881. (This deed was thereupon received in evidence, marked Plaintiff's Exhibit "A" and filed.)

Samuel D. Lount went into possession of the Lount Tract September 21st, 1881, and the Lount Tract has since remained in the possession of the family—my mother and father, [39] brother, daughter and myself—and has never since been out of our possession. (Witness thereupon identifies a blue-print of survey made by City Engineer Davidson of the Churchill Addition to the City of Phoenix, filed in the office of the Recorder of Maricopa County, September 30th, 1898, and points out the Lount Tract thereon to the court. Thereupon the blue-print is received in evidence, marked Plaintiff's Exhibit "B" and filed.)

The present value of the strip of land in dispute, being thirty-three (33) feet by seven hundred four (704) feet, is thirty-five to forty thousand, possibly forty-five thousand dollars. From the time my father took possession of this strip of land in connection with the other land north in 1881 down to the present time, we and our predecessors in interest have had the land cultivated. At the time we took possession it was just farming land, ranch land, and we had it cultivated in one way and another and different parts in trees and towards the last a rose garden. It was used for general purposes as the whole ranch and whole place was used. That use extended continuously from 1881 until 1895. In 1895 we gave a right of way to the street-car people to

(Testimony of Hattie L. Mosher.)

cross. That strip of fence that was there at that time was torn down across their right of way and on each side of it the cultivation gradually became less and less. The last use that was made of it was on the west side of what is now First Street where there are some ornamental trees I had planted on the tract. Between First and Second Streets I had a rose garden and there are some ash trees we planted there at the present time. I had a rose garden there after 1895 and the last remains of that stood until 1901 and there were still some roses in there in 1909, but from 1895 until about 1900 or 1901 the fence began gradually to disappear and after that people began to drive along [40] what would be our line and then for our convenience we drove along it. We put a pathway in order that we could go ourselves on our land, and the public began to walk over there a little bit, and we never objected to it, and the rose garden I spoke of gradually got narrower and narrower in between. I remember seeing the last ones there in 1907 or 1909. This thirty-three (33) feet was enclosed by a barb-wire fence. This fence will show on a map I have. (Thereupon a map or sketch of the City of Phoenix made in 1885 by C. J. Dyer, an engineer, was offered in evidence, but upon objection by defendant was received tentatively by the Court to be ruled upon later and was marked Plaintiff's Exhibit "C" for identification.)

The fence (indicating on this map) extends from the point which we call Second Street to the fence here which we call Center Street and the line which

(Testimony of Hattie L. Mosher.)

shows here is the middle of what is Van Buren Street, the ground in dispute, is thirty-three (33) feet which runs in a line from here which is the north side of Van Buren Street. It is the thirty-three (33) feet between the section lines. If you take a continuous line of what is the north side of Van Buren Street east of our property and run down there this 704 feet, it is the thirty-three feet that is between that line and the section line. The fence is on the section line here or it was in 1885. The fence was put right about here where it shows red on the map. I do not know who put the fence there. It was there in the summer of 1880. I first saw it there the year before we bought the place. The conditions remained the same as they appear upon that sketch from 1885 until the right of way was given to the street-car to go through. The fence was probably torn down when they crossed it. It was probably torn down twenty or twenty-five feet in the middle of the street, and east and [41] west of it it remained the same and did remain the same for two or three or four years until the condition gradually changed. Some of the relics of the uses we put it to were still there from 1907 to 1909. We and our predecessors have never dedicated to the City or to the public use this strip of land or any part of the same and the City or the public have never until now asserted any right in the strip. None of the plaintiffs have ever objected to the public traveling over this strip and are not now objecting to the public traveling over same. We left an open space through our tract to enhance the value of our property and



(Testimony of Hattie L. Mosher.)

for our own convenience to make it possible for us to go from one part of our property to another and for the convenience of our tenants and customers. That strip that was left entirely around our place was left so we could get all around our property, so that if in the future we ever wanted to sell any property to others outside of the family, we would have the tract so arranged that we could give to them a right of way that would serve all of their purposes and the traffic.

Cross-examination.

I have paid taxes on that strip of land. The taxes are being paid on that roadway. We have always paid all the taxes ever demanded of us. I consider that because I am paying taxes on the property adjoining this strip that I am paying taxes on this strip. The Lount Tract was always assessed in its entirety. I have paid taxes upon this property within the last ten years. During the last ten years assessment has been placed upon the property designated as blocks, but there was nothing designated as where the blocks were. (Witness thereupon identifies her signature, that of William B. Lount, her brother, Julia Collins, her daughter, by Mrs. Mosher; also signature of Mr. Porterie and of Mr. Hickey upon the paper presented to her by counsel for defendant.) [42] I filed that paper with the City Clerk, I am sure. I passed it around and got signatures and signed it and filed it. (Thereupon paper designated petition and protest against the paving of Van Buren Street, was read into the record by counsel for defendant and was marked Defendant's Exhibit 1.



**Testimony of A. S. Mills, for Plaintiffs.**

A. S. MILLS, a witness called on behalf of plaintiffs, being duly sworn, testified as follows, on direct examination:

My name is A. S. Mills, and I am a newspaper publisher, at the present time publishing "The Messenger," a weekly paper in Phoenix. I came to Phoenix the last day of January, 1891, and I have lived here most of the time since. I am acquainted with Mrs. Mosher and Mr. Lount and the Lount family. I knew Samuel D. Lount very well in his lifetime. I observed and knew the locality known as Van Buren Street, running from Central Avenue to Second Street, and have known the locality for about twenty-nine years, I suppose. It wasn't a street then, but I have known the locality for that length of time. In 1891 it wasn't a street. At that time the entire tract hadn't been subdivided, the ten-acre tract or whatever size tract it was. I used to pass around it. I happened to know the condition of the street because at that time I was working with the "Arizona Republican" and living across the street from the Adams Hotel and I know I could not go through in that direction to Mr. Lount's; I always had to go down Monroe Street. The Mognett Tract lay north of the Lount Tract and when I went out there to see them, I went out Center Street to the far corner of what would be the Lount Tract now—I believe that's Pierce Street—and then went east a distance of three blocks to Mrs. Mosher's place. There was only a road at that time. I do not know that

(Testimony of A. S. Mills.)

the strip of land was ever all cultivated. There were some rose gardens and things in next [43] to Mrs. Lount's. I think there were some there after Mrs. Lount had built her new residence about 1904 and 1905. There was an old wire fence of some kind there. I do not know what kind of posts. That fence would be about where the center of the street is now, that is what is called the street there, and at the corner of Second Street and Van Buren at that time it extended out there halfway across the street. Mr. Porterie has a little fence of some kind that extended eight feet in front of his house and then that fence extended probably half the width of the street. The street was probably sixty feet wide; it left about twenty-five feet between the old wire fence, and that went down the center of what is called Van Buren Street and Mr. Porterie's to where First Street crosses and there is probably thirty feet—just about the center of the street. The fence was not in a good state of repair, kept getting worse year by year and eventually vanished. I first started visiting the Lounts in the summer of 1892, and there was more or less travel over the north half of Van Buren Street, the portion that was north of the fence I have spoken of, after the street-car line went through, but never cleared up until probably ten years after that, eight or nine, anyway. In 1905 the street was not entirely cleared, but at that time there were some relics of the rose garden that used to exist and there were some mulberry trees, and they had little irrigation ditches running

(Testimony of A. S. Mills.)

from the lot and curving down so they kept these trees watered. That was in the 33-foot strip and Mrs. Mosher was trying to beautify the place some by rose-bushes, so she had rose-bushes on both sides of the little grove of trees. I could not give the exact date when I observed the public traveling over this street generally. They were traveling over it pretty generally in 1905 and 1906, when I used to call at Mrs. Lount's. The street was fairly [44] well open then. That would be fourteen or fifteen years ago. The travel over the street at that time included wagons as well as pedestrian travel. The wagon road was crowded to the south side. There was always at least twenty-five feet if there wasn't too much travel that people would crowd through. It wasn't a real street, a passable street, and all travel was by the streets to the south.

#### On Cross-examination.

I do not know whether it was regarded as a street. It was called Van Buren Street. It wasn't used as a street. There were quite a number of people living there at that time. Center Street has been widened and improved a good deal since then. It was only a big road at that time. I am speaking now of when I first came here. In 1904 Center Street was pretty much of a street, not quite as well improved as it is now, but a good street in 1904, but Van Buren Street was not. Van Buren Street isn't today so much of a thoroughfare. A great deal of the traffic is diverted now, I suppose on account of conditions. It never has been traveled as much as

(Testimony of A. S. Mills.)

a great many other streets. It has been improved some, though, and I think there has been some grading done on that portion of it, but I don't know who did it. I do not recall having seen Van Buren Street sprinkled. I have never lived on that street. I have lived a short distance from it, south of it and west of it.

#### Redirect Examination.

I do not mean that the 33 feet was always known as a street. I mean that there was a strip through that country that was called Van Buren Street, whatever there was there. I do not know whether it applied to these two blocks or not, but I know the east and west line through there was called Van Buren Street. It was very much discussed for many years [45] about widening Van Buren Street so as to make it big enough to travel. There was a road, a sort of a family road, south of the line fence, that I called Van Buren Street.

#### **Testimony of Victor A. Redewill, for Plaintiffs.**

VICTOR A. REDEWILL, a witness called on behalf of plaintiffs, being first duly sworn, testified as follows on direct examination:

My name is Victor A. Redewill. I live here and am engaged in the piano business. I am acquainted with Mrs. Mosher, Mrs. Collins and William B. Lount, and have known them ever since I came here. They were my neighbors. When I was a very young boy, there was an offset in the street and there was a barb-wire fence running somewhere

(Testimony of Victor A. Redewill.)

near the middle of that street. There was a barbwire fence there which wasn't taken down, but was sort of knocked down piecemeal. I couldn't say exactly when the last post was taken up. There was a hole made in the fence at First Street for the street-car to go through in 1895. In 1895 there were mulberry trees growing just inside of this fence and the boys used to climb through the fence to get the mulberries and gradually knocked the fence down. The strip north of the wire fence was cultivated down to 1902 or 1903, somewhere along there. My best recollection is it was somewhere around 1902 or 1903 or 1904. This was generally called Van Buren Street. There was an offset in the street and the people to get past there had to go on the south side of the street. The street wasn't used very much. They used Second Street and when they did go, they went on the south side of the street which would be south of the section line. That condition of things remained, to my recollection, to the early nineteen hundreds. After the fence went down, the people used part of the street. They started to use both parts somewhere around 1903 or 1904. [46]

**Testimony of Eugene Redewill, for Plaintiffs.**

EUGENE REDEWILL, a witness called on behalf of plaintiffs, being first duly sworn, testified as follows on direct examination:

My name is Eugene Redewill. I am in the piano business here and am a brother of Victor Redewill. I have lived here most of my life and have known



(Testimony of Eugene Redewill.)

the plaintiffs in the case ever since I came here. My recollection of Van Buren Street in 1890 and 1891 is that it wasn't a regular thoroughfare at that time. I lived across the street on the northeast corner of Van Buren and Second Streets and we were obliged to reach our home by going up Second Street. Van Buren Street went east of there, but the Lount property, which was Mrs. Mosher's father's property, at that time was in a great big square by itself. Streets were not cut through and it was practically one big parcel of land. It was possible to get through from center on Van Buren Street, but it wasn't a road that was used at all. The Lount property was partly wired in there and there was quite a growth of sun flowers and weeds, just as you will find on the far outskirts of the town to-day. It was practically impassable. I don't believe there was any street through there that was recognized as any kind of a street at all until after 1900, probably a year or two before 1905. I cannot tell you the exact year. My recollection is that the Lount property took in that street; their barb-wire fence ran about what would be the middle of the street now and I know that my father complained that Mr. Lount was not very progressive. He wanted to have a street through and Mr. Lount had his property and his front gate came quite a ways south past our corner and the result was there was no chance of getting a street through there until they had some system and some bridges crossing the corner. Finally the street-car line went up First Street and development



(Testimony of Eugene Redewill.)

took place by which First Street [47] was cut through and a bridge put over for the car line and then that led to the development of Van Buren Street, but the Lount property practically took in Van Buren, or half of it anyhow. My recollection is that there was a barb-wire fence there that was never taken down. We used to crawl through the barb-wire to get mulberries. There was a big row of mulberry trees inside the fence. Then there were some later improvements, but I don't know when those went in there. The present trees were planted after that and then Mrs. Lount had another fence inside of that; a woven wire fence or something like that, and this woven wire fence simply went around the house. I don't believe there was any travel through there south of the wire fence of Lount's, but the fence was taken down on Van Buren—the road wasn't good, wasn't anybody selected it unless they would want to cut through. Monroe, one block south, was a good road and a good amount of the travel came up Monroe and out Second Street.

On Cross-examination.

I do not know when that fence was built. It was there when I first came about thirty years ago.

This closed plaintiff's case. Ordinance No. 275 of the City of Phoenix, which is as follows, was thereupon received in evidence and marked Defendant's Exhibit 2.

**Defendant's Exhibit No. 2.****"ORDINANCE No. 275.**

Adopting an Official Plat of the Resurvey of Churchill's Addition to the City of Phoenix, Maricopa County, Arizona Territory.

The common Council of Phoenix do ordain as follows:

Section 1. That public interest and necessity demand the adoption of a certain plat entitled: 'Official plat of the Resurvey of Churchill's Addition to the City of Phoenix, [48] Maricopa County, Arizona Territory, being all of the S. E. Quarter (SE.  $\frac{1}{4}$ ) of Section five (5), Township one (1) north, range three (3) east of the Gila and Salt River Base and Meridian, surveyed by S. A. Davidson, City Engineer,' and showing upon said plat the correct position or location, course, width and length of all public streets, avenues, alleys and public ways or places as they now exist upon said official plat. And that the survey of the territory described as aforesaid by S. A. Davidson as the City Engineer of the said City of Phoenix, under an order of said Common Council made and entered of record on the 11th day of November, 1897, be and the same is hereby adopted as and declared to be the official survey of all that tract of Churchill's Addition to the City of Phoenix embraced within the confines and boundaries of said described territory as shown by the aforesaid legal Government subdivision.

Section 2. That the plat of said survey as made from the field-notes be and the same is hereby

adopted as and declared to be an official plat of all that part, portion or area of said City as represented in said addition and covered by said survey; and that the position and location, course, width and length of all streets, avenues, alleys and public ways or places are correctly shown upon said official plat.

Section 3. That all streets, avenues, alleys and public ways or places shown upon said plat, and within the confines and boundaries thereof, are hereby declared to be public and dedicated to public use and benefit at large; subject, however, to the exclusive control, management and supervision of the Common Council of said City in the manner and as provided by law.

Section 4. That all buildings, structures and fences erected, or improvements made, by property owners or others [49] along the lines or course of said avenues, streets, alleys and public ways or places as shown upon said plat, shall be erected or made so that the same shall not encroach upon any of the said streets, avenues, alleys, public ways or places as designated by said boundary lines and said official plat, or in any manner interfere with the public use thereof.

Section 5. Any violation of or non-compliance with this ordinance, or any Ordinance of said City of Phoenix, relating to or concerning any official plat of the streets, avenues, alleys, sidewalks or public ways or places, as well as any grade thereof, shall constitute a misdemeanor, punishable by judgment not exceeding \$300, which said judgment may be enforced and collected in the same manner as the judg-

ment in a civil action; or by imprisonment in the city jail of Phoenix for the time allowed by law at the rate of one day's imprisonment for every dollar of fine unpaid; or partly as a judgment in a civil action and partly by imprisonment as aforesaid, provided, that such judgment shall be enforced and satisfied but once by any or all of said methods.

Section 6. That said plat be duly filed for record in the office of the County Recorder of Maricopa County, Arizona Territory.

Passed by the Common Council of the City of Phoenix this 7th day of September, 1898.

Approved this 7th day of September, 1898.

Attest: T. A. JONES,  
City Recorder.

J. C. ADAMS,  
Mayor."

Thereupon defendant in connection with said ordinance offered in evidence the map to which said ordinance referred, which was received in evidence marked Defendant's Exhibit 2 and filed. [50]

Thereupon defendant offered and read in evidence Ordinance No. 192 of the City of Phoenix, which is as follows:

"ORDINANCE No. 192.

An ordinance annexing to the City of Phoenix, in the County of Maricopa, Territory of Arizona, the land, property and territory, situated, lying and being in said County and Territory, to wit: The Southeast quarter ( $\frac{1}{4}$ ) of section five (5), in township one (1) north, range three (3) east of Gila and Salt River Base and Meridian. Whereas, a pe-

tion has been filed with the City Recorder, and the Common Council of the City of Phoenix, signed by the owners of more than one-half in value, according to the last assessment in Maricopa County, of the land, property and territory in Maricopa County, Territory of Arizona, hereinafter mentioned, to wit: The southeast quarter ( $\frac{1}{4}$ ) of section five (5), in township one (1) north, range three (3) east, Gila and Salt River Base and Meridian, according to the United States survey, and commonly known as the Churchill's addition, to the City of Phoenix, and lying contiguous thereto, and not embraced within its limits, and asking that said tract of land, property and territory, be annexed to said city in conformity with the provisions of Section one, of an Act entitled 'An act authorizing incorporated cities to extend and enlarge their limits,' approved April 12th, 1893.

Now, therefore, the Common Council of Phoenix do ordain as follows:

Section 1. That the said property and tract of land and territory, hereinbefore mentioned, and described, be, and the same is hereby annexed to, made a part of, and included within the corporate limits of the City of Phoenix, County of Maricopa, Territory of Arizona, and the same, and every part thereof, shall hereafter be a part and parcel [51] of said city for all purposes whatsoever.

Sec. 2. This ordinance shall be in force and effect from and after its passage and publication according to law.

Passed by the Common Council this 27th day of February, A. D. 1895.



Approved the 27th day of February, A. D. 1895.

Attest: ED SCHWARTZ,

City Recorder.

J. D. MONIHON,

Mayor."

Thereupon defendant offered Ordinance No. 193 and upon order of the Court read the portion thereof referring to Van Buren Street, which is as follows:

**"ORDINANCE No. 193.**

Section 1. That the grade of Center Street from Van Buren Street to the Center of Jackson Street shall be and is now hereby established, and declared to be as follows:

Beginning at the center of Center Street, at its intersection with Van Buren Street, at an elevation of 97.200 feet above the established datum plane (assuming the reference point indicated on a stone, at the northwest corner of the City Hall plaza, to be 98.225 feet above datum plane). Thence along the center of Center Street, on a uniform grade, to a point midway between Van Buren and Monroe Streets, 97.500 feet above said datum plane; thence along the center of Center Street on a uniform grade, to a point in the center of Monroe Street, which point is 97.500 feet above datum plane; thence along the center of Center Street, on a uniform grade, to a point at the center of Adams Street, which point is 97.300 feet above datum plane; thence along the center of Center Street, on a uniform grade, to a point midway between Adams and Washington Streets, which point is 97.300 feet above datum plane; thence along the center of Center Street, on



a [52] uniform grade, to the center of Washington Street, to a point which shall be 97.200 feet above datum plane; thence along the center of Center Street, on a uniform grade, to a point midway between Washington Street and Jefferson Street, which point shall be 97.200 feet above datum plane; thence along the center of Center Street, on a uniform grade, to the center of Jefferson Street, which point shall be 97.140 feet above datum plane; thence along the center of Center Street, on a uniform grade, to a point where the center line of the alley would intersect said center line of said Center Street, which point shall be 96.000 feet above datum plane; thence along the center of Center Street, on a uniform grade, to the center of Madison Street, which point shall be 95.200 feet above datum plane; thence along the center of Center Street, to a point where the center line of the alley between Madison and Jackson Street would intersect the center line of Center Street, on a uniform grade, which point shall be 93.000 feet above datum plane; thence along the center of Center Street on a uniform grade, to the center of Jackson Street, which point of intersection shall be 91.400 feet above datum plane.”

Thereupon defendant introduced section 6 of Ordinance 426 of the City of Phoenix, passed March 22, 1909, reading as follows:

“Section 6. In the portion of Churchill’s Addition known as Lount Tract, the southwest block shall be known as Block 1, the Northwest block as Block 2, the Northeast block as Block 13, and the Southeast block as Block 14. The block south of Block 17

shall be known as Block 16, and the block south of Block 16 as Block 15, and the block south of Block 27 shall be known as Block 28.’’

Thereupon defendant offered map dated May 26th, 1892, being the plat survey of Churchill’s Addition to the City of [53] Phoenix, which was received in evidence marked Defendant’s Exhibit 3, and filed in the case. Thereupon defendant offered in evidence certified copy of deed from Hattie L. Mosher to Julia A. Lount, which certified copy of deed was received in evidence, marked Defendant’s Exhibit 4, and filed; also certified copy of deed of Julia A. Lount, widow, to W. W. Mouer, dated February 4th, 1904, which was received in evidence, marked Defendant’s Exhibit 5, and filed; also certified copy of warranty deed from Hattie L. Mosher, widow, to Julia W. Mosher, single, which was received in evidence marked Defendant’s Exhibit 6, and filed; also certified copy of decree of distribution in the matter of the estate of Julia A. Lount, deceased, decree signed October 22d, 1908, which was received in evidence marked Defendant’s Exhibit 7, and filed; also certified copy of realty mortgage from William B. Lount, Carrie A. Lount, and Hattie L. Mosher to Katie F. Young, which was received in evidence and marked Defendant’s Exhibit 8 and filed; also certified copy of lease, dated December 23, 1908, from William B. Lount and Hattie L. Mosher to J. B. Hocker, which was received in evidence and marked Defendant’s Exhibit 9, and filed; also certified copy of agreement between William B. Lount and Hattie L. Mosier, which was introduced in evi-

dence, marked Defendant's Exhibit 10, and filed; also certified copy of special power of attorney from Hattie L. Mosher, widow, to William B. Lount, which was received in evidence marked Defendant's Exhibit 11, and filed; also certified copy of realty mortgage, William B. Lount and Carrie A. Lount and Hattie L. Mosher by William B. Lount, her attorney in fact, to Phoenix Savings Bank & Trust Company, which was received in evidence marked Defendant's Exhibit 12 and filed; also certified copy of special power of attorney from Hattie L. Mosher, a widow, to William B. Lount, which was received in evidence and marked Defendant's Exhibit 13 and filed; also certified copy of realty mortgage from William B. Lount, Carrie A. Lount, his wife, [54] and Hattie L. Mosher, a widow, by William B. Lount, her attorney in fact, to Phoenix Savings Bank & Trust Company, which was received in evidence and marked Defendant's Exhibit 14, and filed; also certified copy of special power of attorney from Hattie L. Mosher to William B. Lount, which was received in evidence, marked Defendant's Exhibit 15, and filed; also realty mortgage from William B. Lount, Carrie A. Lount, his wife, and Hattie L. Mosher, by William B. Lount, her attorney in fact, to Phoenix Savings Bank & Trust Company, which was received in evidence, marked Defendant's Exhibit 16, and filed; also lease by William B. Lount to W. E. Ferguson and Peter Mohn, received in evidence, marked Defendant's Exhibit 17, and filed; also certified copy of mortgage by Hattie L. Mosher to Paola Perazzo, which was received in evidence,

marked Defendant's Exhibit 18, and filed; also realty mortgage executed by William B. Lount and Carrie A. Lount, his wife, and Hattie L. Mosher, widow, to Phoenix Savings Bank & Trust Company, which was received in evidence, marked Defendant's Exhibit 19, and filed. All of said exhibits, numbered 4 to 19, inclusive, were received in evidence over objection of counsel for plaintiffs.

**Testimony of Clarence Standage, for Defendant.**

CLARENCE STANDAGE, a witness called on behalf of the defendant, being first duly sworn, testified as follows, on direct examination:

I am clerk of the Board of Supervisors of Maricopa County. I have in my hand minute record of the Board of Supervisors No. 1. On page 2 is a record of the minutes of the Board of Supervisors of March 18th, 1871, which reads as follows, in part:

"Ordered that all section lines in this county be, and they are hereby, declared to be highways, and that said roads or highways be four rods wide, that is to say, 33 feet on each [55] side of said line, and that said roads shall be open by order of the board of supervisors whenever they shall deem it expedient."

I also have a record of the minutes of the Board of Supervisors dated May 15th, 1871, which reads in part as follows:

"Ordered that the public highway be open, commencing at the Northeast corner of Section 8, running thence west on the north line of said section north of Phoenix."

I have checked it with the map.

**Testimony of H. R. Patrick, for Defendant.**

H. R. PATRICK, called as a witness on behalf of defendant, being duly sworn, testified as follows on direct examination:

My name is H. R. Patrick. My business is that of civil engineer and surveyor. I reside in the suburbs outside the limits of Phoenix and have lived in this valley a little over forty-one years. I know the tract formerly known as the Lount Tract. When I came here it was known as the King-Woolsey place, the entire Southeast quarter of Section 5, and my recollection is that he had ten acres platted off for his wife as a sort of homestead. That was known then as the Woolsey homestead tract, and later it was acquired by Doctor Conyers and was called at that time the Conyer's Ranch. That was the Conyers that conveyed to Lount. During the time Conyers owned it, I was called on by Doctor Conyers to lay out the front line of his property—that is the south side along what is now Van Buren Street—and I made a survey of it. First, I posted a block at the southeast corner of section 5 and stationed my instrument at the quarter corner between section five and section eight, which is the southwest corner of the quarter-section—southwest corner of the southeast quarter-section—and would be at the intersection of [56] the center line of Center Street and the center line of Van Buren Street, quarter section corner. From that point I ran the line to establish the section line between Section 8 and Section 5, and then at the proper



(Testimony of H. R. Patrick.)

point, using the legal description of the part that was being conveyed to Doctor Conyers. I set off the 33 feet for the county road on the north side of the section line. I laid off that line 33 feet north of the section line from the quarter-section corner east to the southeast corner of the Conyer's tract. That embraced the same property afterwards known as the Lount Tract, and I located the south line of the Lount Tract 33 feet north of the section line between 5 and 8. The line extended from Center Street into what is now Second Street and along the present block lines or lot lines, I think, of the tracts as they are now subdivided. When I made that survey there was no fence on the section line. There was an old fence along what we call the north side of Van Buren Street at that time, which was a barb-wire fence of rather small mesquite posts, lying to the north of the section line, but the fence was not exactly straight on any side of the tract. There was nothing on the section line that struck my view in looking through from corner to corner. That kind of fence was there on the north side of the street at the proper width at the time I made the survey. In 1887 I lived for a short time on East Van Buren Street on the south side of the street opposite this Lount Tract. Later on I roomed at the southeast corner of what is now First Street and Van Buren. At that time the street between Second Street and Center Street was traveled by pedestrians and all kinds of vehicles.



(Testimony of H. R. Patrick.)

On Cross-examination.

At the time I spoke of, the latter part of 1887, the street was traveled apparently the width that it is now. [57] I recall a sketch of the street as it was in 1885, made by Mr. Dyer. (Indicating Plaintiff's Exhibit "C.") I should not say it was technically correct as we would state from an engineering standpoint. It was not taken from measurements or any survey on the ground. I would not say that in 1887 the street was traveled over as it is now, but it was traveled by pedestrians and vehicles of certain kinds over all parts of it. I do not remember seeing any garden or any ornamental shade trees within the full width of the street, 33 feet each side. There were mulberry trees in the yard on the north side of the street, but not included in the 33 feet laid out as county road. I also surveyed the Barnum lot and they established their fence by my survey. My recollection is that the old original wire fence on the Lount property at the southeast corner of the Lount tract had gone out of line, outside of 33 feet. I knew Mr. Hancock who surveyed and platted the town of Phoenix. He gave me the data by which I finally found and uncovered the Quarter-section corner and section corner between section 8 and 5. (Thereupon the map was offered and received in evidence, marked Plaintiffs' Exhibit 3 and filed.) That is a map of the town of Phoenix (referring to Plaintiff's Exhibit 3) but not a complete map. It doesn't show the section line or section corner at any part of the plat. At the time the City of Phoenix was surveyed,

(Testimony of H. R. Patrick.)

the section corner had been established for several years. I don't know how many fences were built by Mr. Lount on the south side. I think he built a new fence after he acquired the property approximately on the location of the old original fence. The old original fence was 33 feet north of the section line and I do not know whether he built it or whether Doctor Conyers built it, but it was put in about that time. I surveyed the Conyers south line in 1880. [58]

**Testimony of Homer A. Turney, for Defendant.**

HOMER A. TURNEY, called as a witness on behalf of defendant, being duly sworn, testified as follows on direct examination:

My name is Homer A. Turney. I have lived in Phoenix thirty-one years. My business is civil engineer. I was city engineer of Phoenix beginning in 1902, for about twelve years. I made a survey of the tract of land known as the Lount Tract, for Mr. William B. Lount, a brother of Mrs. Mosher, and one of the plaintiffs in this case. When I became city engineer I began making maps for the general real estate trade, among which was a map of Churchill's Addition. When I was drawing that map, I went to William B. Lount and asked him for his subdivision map of the Lount Tract. He said he had such a map that was made by Sam Davidson, the former city engineer, for S. D. Lount, his father. The next day he told me he was unable to find the map and asked if I could make a survey which would recover the map.

(Testimony of Homer A. Turney.)

He told me that the map had been made by prolonging the exact boundaries of all the streets in Churchill's Addition and the surrounding streets, Van Buren Street and Central Avenue. He said the city engineer had set big block corners at all of the blocks and that if I went into the field, I would find these block corners. I went into the field with my instruments and prolonged all the boundary streets and intersecting streets on exact straight lines of those streets and I did find the block corners as he had described and marked in the manner he had described. I then measured the blocks and found they conformed exactly with the blocks in the Churchill Addition. I then, under that subdivision of the map of the Churchill Addition, as city engineer, gave those block numbers and those lots numbers in accordance with the Ordinance which was read in testimony this morning. Some time after that a customer came to my office and asked me [59] to survey a lot in the Lount Tract, saying he had been sent by Mr. W. B. Lount and that he had a correct map to be followed in making subdivision surveys in that tract. I then went to work and staked out that land and staked out lots two other times, and the customers stated to me they were sent by Mr. Lount. Later Mr. Lount asked me to make a survey of one lot in that tract and I made such survey on the 21st of May, 1913, surveying the lot at the northeast corner of Polk Street and First Street and Mr. Lount paid the bill for doing so. I did not look for the corners of the block in Van Buren Street, but could tell from

(Testimony of Homer A. Turney.)

may survey that the lines of this block conformed to the present Van Buren Street exactly.

**On Cross-examination.**

I don't know for what purpose the survey which I made for Mr. Lount in 1913 was made.

**On Redirect Examination.**

I am familiar with the official plat of Churchill's Addition, the drawing of the map being done by a man in my employ and under my supervision. On that map (indicating) the line drawn between the quarter-section corner and the section corner marks the section line and the part at which the words "Van Buren Street" appear, lies north of the section line and is 33 feet in width. I am familiar with the streets in the City of Phoenix and I don't recall any street that is 66 feet in width, except it be a street on a section line.

**Testimony of George Kirkland, for Defendant.**

GEORGE KIRKLAND, called as a witness on behalf of defendant, being sworn, testified as follows on direct examination:

My name is George Kirkland and I am deputy city assessor and tax collector of the City of Phoenix. The tax rolls are made up in my office. I have a record taken from the tax roll and maps in my office from 1906 down to date, [60] which includes the portion of the tax roll relating to the property owned by Mrs. Mosher, her daughter and William B. Lount. That property is described on the rolls as lots and blocks in the Churchill Addition. The record I have

(Testimony of George Kirkland.)

with me comprises merely four blocks in the Churchill Addition. There are assessments upon a portion of what is now Van Buren Street, but no assessments upon the street itself. I have a map used in the assessment of the property from which we make these records (producing map). The property in question is indicated as Blocks 1 and 14 of the Churchill's Addition. This map was made in 1907 and used in 1910, 1911 and 1912.

#### On Cross-examination.

I have been in office for six years. They ceased assessing this property as a solid body by acreage when the blocks were subdivided in 1909 and 1910. The method of collecting taxes is practically the same, except that prior to that time it was known as the Lount Tract and after that time it was known as Block so and so of the Churchill Addition. There was a change in valuation after this change. It was increased one time and then it was decreased. They did pay more taxes because it was not assessed in acre tracts. It was known as the North and South Half of Block One and the North and South Half of Block 14. It was a solid piece of property known as the Lount Tract in that it had streets all around it, but it wasn't assessed in one piece. The city made the change and subdivided the blocks for their own convenience. I do not know that Mr. Lount and Mrs. Mosher protested against that form of assessment and asked that the assessment of the entire acreage be made as formerly. It was assessed as blocks after it was laid out in blocks. Before that it was



(Testimony of V. A. Thompson.)

assessed as one tract, I presume, but I have no knowledge of it as that was prior to my time. [61]

**Testimony of V. A. Thompson, for Defendant.**

V. A. THOMPSON, called as a witness on behalf of the defendant, being sworn, testified as follows on direct examination:

My name is V. A. Thompson and I am City Manager of the City of Phoenix. Prior to becoming City Manager I was superintendent of streets, being first appointed January 15th, 1915. I have been familiar with the streets of the city since that time. I have known Van Buren Street between Center Street and Second Street for about seventeen years. There has been no change in the width of the street during that time that I know of. The street has been graded frequently and sprinkled very often ever since for the full width of the roadway is as the roadway at the present time. I have never received any protest from anybody with reference to the use of the street by the city during that time.

**On Cross-examination.**

During the seventeen years I have spoken of, and during the time I was superintendent of streets, I never interfered in any way with the work that the plaintiffs in this case did on the streets and sidewalks. I do not know whether they put in sidewalks or filled up the spaces in the street.

**Redirect Examination.**

Private owners frequently lay sidewalk along their property.



**Testimony of Otto Kitchen, for Defendant.**

OTTO KITCHEN, called as a witness on behalf of the defendant, being sworn, testified as follows on direct examination :

My name is Otto Kitchen. I am chief of surveying party of the City of Phoenix. (Referring to the description of the land appearing in Exhibit 7.) I have taken that description and determined the south line of the property described, and as it stands now, the building on the northeast corner [62] of Central and Van Buren is exactly on the property line 33 feet north of the section line.

**Testimony of Lytton B. Hitchcock, for Defendant.**

LYTTON B. HITCHCOCK, called as a witness on behalf of the defendant, being duly sworn, testified as follows on direct examination :

My name is Lytton B. Hitchcock. I am city engineer and superintendent of streets of the City of Phoenix. The nature of the improvement contemplated along Van Buren Street between Center Street and Second Street is to pave the roadway 40 feet in width. According to our records with reference to the section line, the paving would be approximately in the Center of the Street and the center line of the paving would be within nine inches of being north of the section line. The center line of the paving would be north of the property line of the Lount property 32.25 feet. The Lount property would be 32.25 feet north of the center line of the improvement. The improvement would terminate 12 feet and 3 inches

(Testimony of Lytton B. Hitchcock.)

from the property line. That would be the curb line and would be the same from the property line on the south side.

**Testimony of J. A. Porterie, for Defendant.**

J. A. PORTERIE, called as a witness on behalf of the defendant, being duly sworn, testified as follows on direct examination:

My name is J. A. Porterie. I live at 135 East Van Buren Street and have lived there since 1881. I recall the fence along the Lount property on the south. I do not recall where the fence was with reference to the section line. The fence with reference to the present street was in the same position where it is now, but it was a different fence. But if I remember right, this fence is now in the same position where the other was.

**On Cross-examination.**

I am referring to the fence on the south side of the [63] Lount tract, except it was continued from what they called Second Street up to Center Street. First Street did not run north into the Lount Tract at that time. The fence was continued all along that line, that is running west. I had a fence there in 1885. My fence was about ten feet probably north of my front on the north side. And I measured 137½ feet from the corner of the alley and fenced in part of the street which I had a right to because those lots were 137½ feet. I fenced in my own property. It is Van Buren Street now—that is people traveled it, but it belongs to my lot. It is not fenced in now

(Testimony of J. A. Porterie.)

but it was fenced in with willow trees and it left a very narrow road. In 1881, when I moved there, there was a narrow passageway. It wasn't used as a roadway or street on account of the section line being closed up west of Center Street north of the school-house. Teams used to go down from Five Points to Monroe and go around by way of Monroe to Second Street and turn that way on to Tempe. The street wasn't traveled very much, except an occasional Mexican came in with a load of wood or some farmer. I don't think there was much change between 1881 and 1885. I built the first house on the front there between First Street and Second Street, because the street was considered all back lot then—the alley was the front part of that half block and the street where it is now was considered the back yard. I don't know how many years it was considered a back yard. Things have grown so I have lost track of what took place. I remember when the street-car was put down, but I don't recollect anything about Mrs. Lount and Mrs. Mosher having part of the street in cultivation. There was a row of mulberry trees about ten or twelve feet north of their fence, and I believe some rose-bushes in the ditch there where the trees were planted, and those trees were cut down and substituted by ash trees that [64] have grown since, but if that garden was there, I have no recollection. I should judge it was about sixty feet, more or less, between my fence and the Lount fence. I am still living in the place and my front is on Van Buren Street and not on the alley, but in the early days I

(Testimony of J. A. Porterie.)

lived in the alley altogether. I cannot say when Van Buren Street began to be traveled. I have forgotten the dates.

### REBUTTAL.

Plaintiff thereupon offered in evidence declaratory statements showing that the property in question had been segregated from Government property on January 10th, 1871. The same was received in evidence over the objection of defendant, marked Plaintiffs' Exhibit "D" and read into the record as follows:

"Department of the Interior, United States Land Office, Phoenix, Ariz.

November 21, 1919.

To Whom It May Concern: I hereby certify that the records of this office show the Pre-emption Declaratory Statement 97 was filed January 10 ( or 16) 71 and Apr. 21, 71 by Daniel Troomey for the SE.¼, section 5, Tp. 1 N., R. 3 East G. and S. R. Mer. Entry No. 45 was made Jan. 2, 74.

SCOTT WHITE,  
Receiver."

### **Testimony of Hattie L. Mosher, for Plaintiff (in Rebuttal).**

HATTIE L. MOSHER, called as a witness in rebuttal, testified as follows:

Referring to why the descriptions in the various statements offered in evidence by the defendant were, some by metes and bounds and some by blocks and lots, I would say that the metes and bounds were used

(Testimony of Hattie L. Mosher.)

when it had to be legal and accurate and we refer to lots and blocks purely as a matter of convenience for ourselves. We had to call them something. The mortgage on the house I live in for \$3,500.00 was given by metes and bounds, and was given with a right of way in case the [65] mortgage was never paid. He was given a right of way over ground that was necessary to reach it. We used the lots and blocks as a matter of our own personal convenience. The decree of distribution described the property by blocks and that was according to an arrangement we had with ourselves.

**Testimony of A. S. Mills, for Plaintiffs (Recalled in Rebuttal).**

A. S. MILLS, called as a witness in rebuttal, testified as follows:

Referring to the fence, which on direct examination I testified to, as having been maintained by Mr. Lount on the south side of the Lount property in Van Buren Street. I had occasion, one time very particularly, to have my attention called to it. Mr. Lount asked me to walk out with him to the front gate to show me where he called the line and showed me the line of the fence. We noticed quite particularly about the distance there was between his fence and Porterie's fence. There was a fence there and it was about the middle of what is now the present street or about 25 feet from Mr. Porterie's fence which was seven or eight feet in front of his house. That would be about the middle of the street. [66]



**Plaintiff's Exhibit "A."**

Deed from B. L. Conyers and Isabel Conyers, his wife, to Samuel D. Lount, dated September 21st, 1881, recorded September 21st, 1881, in Book 7 of Deeds, page 32, Records of Maricopa County, Arizona, covering the following described property in Maricopa County, Territory of Arizona:

"That portion of the West Half (W. $\frac{1}{2}$ ) of the Southeast Quarter (SE. $\frac{1}{4}$ ) of Section Number Five (5), Township One (1) north of Range Three (3) east of the district of lands subject to sale at the Land Office at Florence, Territory of Arizona, same particularly described as follows:

Commencing at the intersection of Van *Burden* and Center Streets of *sd* City of Phoenix on the east side of Center Street and thenorth side of Van Buren Street and running thence east along the line of said Van Buren Street Seven Hundred Fifty-four feet to a post; thence north Seven Hundred Fourteen (714) feet to a post; thence west Seven Hundred Sixty-one feet to a post; thence south Seven Hundred Twelve feet to the place of beginning; all the said land being situate in the County of Maricopa, Territory of Arizona." [67]

**Defendant's Exhibit No. 1.**

Petition and Protest to the Mayor, Commissioners, and City Manager of the City of Phoenix.

We, the undersigned property owners of Van Buren Street, holding property between Second Street and Central Avenue, most respectfully petition your Honorable Body to cut out the street facing



our respective properties from the paving district embodied in the petition now before you, asking that Monroe and Van Buren Streets be paved from Second Street to Center Street, and that North First Street be paved from Adams Street to Van Buren Street.

We, the undersigned, most respectfully protest against any paving being done on Van Buren Street between North Second Street and North Central Avenue, at the present time, as we believe that the best interests of this street will be served by waiting until the canal question is settled, and a way is provided to insure the paving over the canal where it crosses, and runs, in Van Buren Street for a distance of a block and a half.

	Number of feet owned.
Signed :	
P. E. Hickey for Mrs. Leach.	
(Signed) Mrs. E. N. Leach	
By P. K. Hickey.....	100
A. J. Porterie.	
(Signed) J. A. Porterie.....	50
W. B. Lount.	
(Signed) W. B. Lount.....	300
Hattie L. Mosher.	
(Signed) Hattie L. Mosher.....	150
Julia Collins.	
(Signed) Julia Collins—By Hattie L. Mosher .....	150
	<hr/>
	750 feet.

Total length in Van Buren Street.....1170

---

Not wanting paving at present.....: 750

Indifferent (John Gregg)..... 50

---

Total length not signed up..... 800

Wanting paving at once..... 370

---

Total length.....1170

[69]

#### **Defendant's Exhibit No. 4.**

Warranty deed, dated January 8th, 1903, recorded December 8th, 1903, Book 63 of Deeds, page 437, Records of Maricopa County, Arizona, from Hattie L. Mosher, widow, to Julia A. Lount, of following described property:

“All grantor's interest in the estate of S. D. Lount, deceased, by reason of her being an heir, legatee, and devisee under the last will and testament of said S. D. Lount, deceased, also the east Half (E.1/2) of the block of land in the Churchill Addition to the City of Phoenix, County of Maricopa, Territory of Arizona, bounded on the north by Polk Street, on the east by First Street, on the south by Van Buren Street and on the west by Center Street. Also an undivided one-eighth interest in the business and property of S. D. Lount & Son, all of the above property situated in Maricopa County, Territory of Arizona.”

**Defendant's Exhibit No. 5.**

Deed from Julia Lount, widow, to W. W. Moore, dated February 4th, 1904, recorded March 8th, 1904, Book 65 of Deeds, page 391, Records of Maricopa County, Arizona, covering the following described property:

“Beginning at a stone monument located at the intersection of First and Taylor Streets in Churchill's Addition to the City of Phoenix, said stone monument being sixteen and eighty-four one-hundredths (16.84) feet west of the Center line of First Street in said Churchill's Addition and thirty (30) feet south of the north line of Taylor Street in said Churchill's Addition running thence southerly on a line with the street intersection stone monument at the intersection of [70] First and Van Buren Streets, one hundred and seventy (170) feet thence easterly sixty-eight and twenty-eight one-hundredths (68.28) feet on a line parallel to the section line on the north side of section eight (8), Township one (1) north, Range Three (3), East Gila and Salt River Base and Meridian to a stake at the northwest corner of the tract of land herein conveyed thence continuing easterly on this same line one hundred and forty (140) feet to a stake, thence southerly on a line parallel to a line connecting the stone monuments hereinbefore mentioned fifty (50) feet to a stake thence westerly on a line parallel with the above-mentioned section line one hundred and forty (140) feet to a stake, thence northerly on a line parallel to the east line of said tract fifty (50) feet to

the above-mentioned stake at the northwest corner of said tract hereinbefore mentioned containing sixteen one-hundredths (.16) of an acre more or less, together with a Right of Way of one hundred (100) feet in width on the west of said tract extending from Van Buren Street to Taylor Street for the purpose of ingress and egress from said tract and the Right of Way on the East of said Tract twenty (20) feet in width, extending northerly to Taylor Street for the said purpose of ingress and egress, being a portion of the Lount Tract of the City of Phoenix."

#### **Defendant's Exhibit No. 6.**

Warranty deed, Hattie L. Mosher, widow, to Julia W. Mosher, single, dated April 30th, 1908, recorded June 26th, 1908, Book 80 of Deeds, page 637, Records of Maricopa County, Arizona, covering the following described property:

"All of the East Half (E. 1/2) of that block of land in Churchill's Addition to the City of Phoenix, Maricopa County, Arizona, bounded on the north by Polk Street, on the east by First Street, on the south by Van Buren Street and on the west by Center Street."  
[71]

#### **Defendant's Exhibit No. 7.**

Decree of distribution in estate of Julia A. Lount, deceased, recorded in the office of the Recorder of Maricopa County, Arizona, November 9th, 1908, Book 13 of Miscellaneous Records, page 151, distributing said estate as follows:

"1. All of the east one-half of Block One (1) Churchill's Addition to the City of Phoenix, Mari-

copa County, Arizona, to Julia W. Mosher.

2. Of the undivided one-half-interest in a certain lot of ice-making machinery located in a building on the northeast corner of Washington and Fourth Sts., in the city of Phoenix, Maricopa County, Arizona, and of the undivided one-half interest in Lots Seven (7), Eight (8), Ten (10), and Twelve (12), in Block Seventeen (17) of the City of Phoenix, Maricopa County, Arizona, belonging to the estate of Julia A. Lount, deceased, five-eighths to Hattie L. Mosher and three-eighths to William B. Lount.

2. Of the undivided three-fourths interest in the west half of Block One (1) Churchill's Addition to the City of Phoenix, Maricopa County, Arizona.

Of the undivided three-fourths interest in Block Two (2) of Churchill's Addition to the City of Phoenix, Maricopa County, Arizona.

Of the undivided three-fourth interest in Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12 and 14 in Block 13 of Churchill's Addition to the City of Phoenix, Maricopa County, Arizona.

And of the undivided three-fourths interest in Lots 3, 5, 7, 9 and 11 in Block 59 of the City of Phoenix, Maricopa County, Arizona.

All belonging to the estate of Julia A. Lount, deceased, an undivided two-thirds to Hattie L. Mosher, and an undivided [72] one-third to William B. Lount.

4. All the remaining property belonging to said estate to Julia A. Lount, deceased, whether real, personal or mixed, to Hattie L. Mosher and William B. Lount, share and share alike. So far as now known,



the remaining property of said estate consists of the following described real property, to wit:

Lots 11 and 12 in Block 14 of Churchill's Addition to the City of Phoenix, Maricopa County, Arizona.

Lots three (3) in Block Four (4) Montgomery's Addition to the City of Phoenix, Maricopa County, Arizona.

The East half of the northwest quarter of Section 31, Twp. 2 North, Range 1 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona.

Also beginning at the northwest corner of Section thirteen, Township One North, Range Five East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, running thence east one hundred and fifty-three rods; thence south one hundred and fifty rods; thence west twenty rods; thence south to the South Boundary line of the North one-half of said Section Thirteen; thence west along said South boundary line to the West Boundary line of said Section; thence north along said West boundary line to the place of beginning. Subject to all canal and reservoir contracts now thereon, together with one and three-quarter water rights in the Highland canal. Also, the South one-half of the Southwest quarter and the Southwest quarter of the Southeast quarter and the Northeast quarter of the Southwest quarter of Section One (1) Township One (1) North, Range Five (5) East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona." [73]

#### **Defendant's Exhibit No. 8.**

Realty Mortgage, William B. Lount, Carrie A. Lount, wife of William B. Lount, and Hattie L.



Mosher, to Katie F. Young, dated November 9th, 1908, recorded November 14th, 1908, Book 61 of Mortgages at page 494, Records of Maricopa County, Arizona, covering the following property:

The real estate lying and being in the County of Maricopa and Territory of Arizona and known and described as that portion of the west one half (W.  $\frac{1}{2}$ ) of the Southeast Quarter (SE.  $\frac{1}{4}$ ) of Section five (5) township one (1) North of Range Three (3) East of Gila and Salt River Base and Meridian, described as follows:

Commencing at the intersection of Van Buren Street and Center Street at the quarter-section corner between sections five and eight in Township one north of Range three east of the Gila and Salt River Base and Meridian running thence east forty nine and twenty one hundredths feet, thence north thirty three feet to point of beginning, said point being at the northeast corner of the intersection of Center Street and Van Burden Street, thence north along the east line of said Center Street the distance of seventy five feet, thence east one hundred and thirty five feet, thence south seventy five feet, thence west one hundred and thirty five feet to point of beginning.

#### **Defendant's Exhibit No. 9.**

Lease, W. B. Lount and Hattie L. Mosher to J. B. Hocker, dated December 23d, 1908, recorded January 5th, 1909, Book 3 of Leases, page 615, Records of Maricopa County, Arizona, covering the following property: [74]

“That certain building located on Lot One (1) in Block One (1) of the Lount Tract in Churchill Addition to the City of Phoenix, County of Maricopa, Territory of Arizona, and situated on the northeast corner of Center and Van Buren Streets in the City of Phoenix, County of Maricopa, Territory of Arizona, and fronting fifty (50) feet on Center Street and one hundred and thirty-five (135) feet on Van Buren Street, now occupied by party of the second part as a livery stable, together with certain sheds on Lot Two (2) of Block One (1) of said Lount Tract, and used in connection with said livery-stable.”

#### **Defendant's Exhibit No. 10.**

Agreement between W. B. Lount and Hattie L. Mosher, dated January 2d, 1909, recorded February 6th, 1909, Book 3 of Agreements, page 421, Records of Maricopa County, Arizona, covers agreement concerning following property:

“A portion of Block Fourteen Churchill's Addition; Lots One (1), Two (2), Three (3), Five (5), Six (6), Seven (7), Twelve (12), and Fourteen (14), in Block Thirteen (13), of Churchill's Addition to the City of Phoenix; Lots One (1), Two (2), Three (3), Four (4), Five (5), and Six (6), Block One (1) of Churchill's Addition; Block Two (2) of Churchill's Addition to the City of Phoenix, Lots Eight (8), Nine (9), Ten (10) and Eleven (11) in Block Thirteen (13) of Churchill's Addition; Lots Three (3), Five (5), Seven (7), Nine (9), and Eleven (11) in Block Fifty-nine (59) of the City of Phoenix,

and Lot Three (3) in Block Four (4) Montgomery's Addition to the City of Phoenix, known as the Mowrey Place." [75]

### **Defendant's Exhibit No. 11.**

Special Power of Attorney, Hattie L. Mosher, a widow, to W. B. Lount, dated February 27th, 1909, recorded December 29th, 1909, Book 3 of Powers of Attorney, page 609, Records of Maricopa County, Arizona, granting power to deal with the following described real estate:

Lots 5 and 6, Block 1, Lots 1, 2, 3, 5, 6, 7, 12 and 14, Block 13, Churchill's Addition to the City of Phoenix, County of Maricopa Territory of Arizona, also Lot 3, Block 4, Montgomery's Addition to said City of Phoenix; also the NW.  $\frac{1}{4}$  Sec. 13, Tp. 1 N., R. 5 E., and S.  $\frac{1}{2}$  of SW.  $\frac{1}{4}$  & NE.  $\frac{1}{4}$  of SW.  $\frac{1}{4}$  and SW.  $\frac{1}{4}$  of SE.  $\frac{1}{4}$  Sec. 1, Tp. 1 N., R. 5 E., and E.  $\frac{1}{2}$  of NW.  $\frac{1}{4}$  Sec. 31, Tp. 2 N., R. 1 E., all in Maricopa County, Territory of Arizona, G. & S. R. B. & M., also lots 7, 8 and 10 & 12, Block 17 in said City of Phoenix, and Lot 1, Block 2, and W. 140 feet of Lot A, Block 2 RR Place, Sub. Div. of Murphy's Addition to said City of Phoenix."

### **Defendant's Exhibit No. 12.**

Realty Mortgage, W. B. Lount, Carrie A. Lount, his wife, and Hattie L. Mosher, a widow, by W. B. Lount, her attorney in fact, to the Phoenix Savings Bank & Trust Company, dated January 10th, 1911, Recorded January 10th, 1911, in Book 70 of Mortgages, page 214, Records of Maricopa County,

Arizona, covering the following described property.

“The following real estate lying and being in the County of Maricopa and Territory of Arizona, and known and described as Commencing at the Southeast corner of Central Avenue and Polk Street in the City of Phoenix, and running thence South one hundred (100) feet; thence east one hundred and thirty-five (135) feet, thence North one hundred (100) feet to Polk [76] Street, thence west one hundred thirty-five (135) feet to the place of beginning, said described land being known as lots 5 and 6 in Block 1 of Churchill’s Addition to the City of Phoenix, according to an unrecorded plat thereof.”

#### **Defendant’s Exhibit No. 13.**

Special Power of Attorney, Hattie L. Mosher, a widow, to W. B. Lount, dated May 9th, 1912, recorded June 26th, 1912, in Book Four, Powers of Attorney, page 81, Records of Maricopa County, Arizona, granting power to deal with the following real estate:

“All of Block Fourteen (14) and Lot Four (4) in Block One (1), Churchill’s Addition to the City of Phoenix, County of Maricopa, State of Arizona.”

#### **Defendant’s Exhibit No. 14.**

Realty Mortgage, W. B. Lount, Carrie A. Lount, his wife, and Hattie L. Mosher, a widow, by W. B. Lount, her attorney in fact, to Phoenix Savings Bank & Trust Company, dated June 26th, 1912, recorded June 26th, 1912, in Book 76 of Mortgages, at page 295, Records of Maricopa County, Arizona, covering the following described property:

“The following real estate lying and being in the County of Maricopa and State of Arizona, and known and described as Commencing at the Northeast corner of Van Buren and First Streets, in the City of Phoenix, and running north on First Street one hundred (100) feet, thence east one hundred forty (140) feet, thence south one hundred (100) feet, thence west on Van Buren Street one hundred forty (140) feet to place of beginning; said described land being known as lots one (1) and [77] two (2) in block (14) of Churchill’s Addition to the City of Phoenix, according to an unrecorded plat thereof.”

**Defendant’s Exhibit No. 15.**

Special Power of Attorney, Hattie L. Mosher, widow, to W. B. Lount, dated September 14th, 1912, recorded November 8th, 1912, in Book Four of Powers of Attorney, page 94, Records of Maricopa County, Arizona, granting power to deal with the following property:

“Lots one (1), two (2), three (3) and four (4), Block one (1), Churchill’s Addition to the City of Phoenix, County of Maricopa, State of Arizona.”

**Defendant’s Exhibit No. 16.**

Realty Mortgage, W. B. Lount and Carrie A. Lount, his wife, and Hattie L. Mosher, a widow, by W. B. Lount, her attorney in fact, to Phoenix Savings Bank & Trust Company, dated November 8th, 1912, recorded November 8th, 1912, Book 83 of Mortgages, page 151, Records of Maricopa County, Arizona, covering the following property:



“The following real estate lying and being in the County of Maricopa, and State of Arizona, and known and described as: Commencing at a point one hundred (100) feet south of the southeast corner of Central Avenue, and Polk Street, in the City of Phoenix, and running south seventy-five (75) feet, thence east one hundred thirty-five (135) feet; thence north seventy-five (75) feet, thence west one hundred thirty-five (135) feet to the place of beginning said described land being known as Lot Four (4) and the north one-half of Lot Three (3) in Block One (1) of Churchill’s Addition to the City of Phoenix, according to an unrecorded plat thereof.”  
[78]

**Defendant’s Exhibit No. 17.**

Lease from W. B. Lount to W. E. Ferguson and Peter Mohn, dated November 8th, 1912, recorded November 8th, 1912, Book 4 of Leases, page 170, Records of Maricopa County, covering the following described property:

“A one-story brick building fronting on Central Avenue and running back to the Alley, with a second story addition at the alley and of said building, and covering all of lot four and the north twenty-five feet of Lot Three in Block One of Churchill’s Addition to the City of Phoenix, Arizona. Said building to be occupied by the said parties of the second part as an automobile garage, machine-shop, salesroom and warehouse.”

**Defendant’s Exhibit No. 18.**

Realty mortgage, Hattie L. Mosher, a widow, to



Paola Perrazzo, dated September 13th, 1916, recorded September 16th, 1916, in Book 101 of Mortgages, page 424, Records of Maricopa County, Arizona, covering the following property:

“The following described premises and property, lying and being in the City of Phoenix, County of Maricopa and State of Arizona, known and described as follows, to wit:

That portion of what is known as the Lount Tract, beginning at a stone monument at the intersection of First and Taylor Streets in Churchill's Addition to the City of Phoenix, said stone being 16.84 feet West of the Center line of First Street in said Churchill's Addition and 30 feet South of the North line of Taylor Street in said Churchill's Addition; running thence southerly on a line parallel with the street intersection stone monument at the intersection of First and Van Buren Streets 170 feet; thence Easterly 68.28 feet on a line parallel to the Section line on the North side of Section 8 in Township 1 North of Range 3 East of the G. & S. R. B. & M., to a [79] stake on the Northwest corner of the tract of land hereby conveyed; thence continuing Easterly on this same line 140 feet to a stake; thence southerly on a line parallel to a line connecting the stone monuments hereinbefore described 50 feet to a stake; thence Westerly on a line parallel with the above mentioned Section line 140 feet to a stake; thence Northerly on a line parallel to the East line of said tract 50 feet to the above mentioned stake at the Northwest corner of said tract herein above mentioned, containing 16/100 of an acre more or less.

Together with right of way 100 feet in width on the West of said tract, extending from Van Buren Street to Taylor Street for the purposes of ingress and egress from the said tract and for the right of way on the East of said tract 20 feet in width extending Northerly to Taylor Street for the purpose of ingress and egress; and together with all rights, privileges and appurtenances thereto in anywise belonging, said property being the same property conveyed to Van I. Jones by W. C. Dawes and Callie M. Dawes, his wife, the record of which conveyance is contained in Book 103 of Deeds at page 328 in the office of the County Recorder of said county and state.”

**Defendant's Exhibit No. 19.**

Realty Mortgage, W. B. Lount, Carrie A. Lount, his wife, and Hattie L. Mosher, a widow, to Phoenix Savings Bank & Trust Company, dated October 10th, 1916, recorded October 11th, 1916, in Book 102 of Mortgages, page 142, Records of Maricopa County; Arizona, covering the following described property:

“All that certain real estate lying and being in the County of Maricopa, and State of Arizona, known and described as follows, to wit: [80]

Commencing at the southeast corner of Central Avenue and Polk Street in the City of Phoenix, and running thence South one hundred (100) feet, thence East one hundred and thirty-five (135) feet; thence North one hundred (100) feet to Polk Street; thence West one hundred and thirty-five (135) feet to the place of beginning. Said described land being known as Lots five (5) and six (6) in Block one (1) of

Churchill's Addition to the City of Phoenix, according to an unrecorded plat thereof."

[Endorsements]: E.—238. In the District Court of the United States, in and for the District of Arizona. Julia Mosher Collins, William B. Lount, Hattie L. Mosher, Plaintiffs, vs. City of Phoenix, a Municipal Corporation, Defendant. Statement of Evidence. Filed April 27, 1920. C. R. McFall, Clerk. By Clyde C. Downing, Deputy Clerk. [81]

---

In the District Court of the United States, in and for  
the District of Arizona.

E.—90.

JULIA MOSHER COLLINS, WILLIAM B.  
LOUNT, HATTIE L. MOSHER,  
Appellants,

vs.

CITY OF PHOENIX, a Municipal Corporation,  
Appellee.

**Notice of Filing and Presentation of Statement of  
Evidence.**

To the Honorable R. E. SLOAN, and the Honorable  
J. E. NELSON, Attorneys for Appellee:

PLEASE TAKE NOTICE that on the 27th day of April, 1920, the undersigned filed with the clerk of this court a statement of the evidence to be included in the record in the above cause, and that on the 10th day of May, 1920, he will present the same for approval to the Monorable William H. Sawtelle, Judge

of the District Court of the United States in and for the District of Arizona, at Tucson, Arizona.

Dated this 27 day of April, 1920.

(Signed) J. B. WOODWARD,  
Attorney for Appellant.

Service of within notice and copy of statement of evidence is hereby accepted this 27th day of April, 1920.

(Signed) R. E. SLOAN,  
R. O. W.,  
J. E. NELSON,  
Attorneys for Appellee.

[Endorsements]: E.—238. In the District Court of the United States in and for the District of Arizona. Julia Mosher Collins, William B. Lount, Hattie L. Mosher, Appellants, vs. City of Phoenix, a Municipal Corporation, Appellee. Notice. Filed April 27, 1920. C. R. McFall, Clerk. By Clyde C. Downing, Deputy Clerk. [82]

---

In the District Court of the United States, in and for the District of Arizona.

E.—90.

JULIA MOSHER COLLINS, WILLIAM B.  
LOUNT, HATTIE L. MOSHER,  
Appellants,

vs.

CITY OF PHOENIX, a Municipal Corporation,  
Appellee.

**Stipulation in re Statement of Evidence.**

Defendant's counsel in the above cause agree that the statement of the evidence filed by plaintiffs and appellants herein is correct.

(Signed) JAMES E. NELSON,  
Atty. for Appellee.  
J. B. WOODWARD,  
Attorney for Appellants.

[Endorsements]: E.—90. In the District Court of the United States, in and for the District of Arizona. Julia Mosher Collins, William B. Lount, Hattie L. Mosher, Appellants, vs. City of Phoenix, a Municipal Corporation, Appellee. Stipulation. Filed May 14, A. D. 1920. C. R. McFall, Clerk. James E. Nelson, Attorney for Appellee. J. B. Woodward, Attorney for Appellant. [83]

---

In the District Court of the United States, in and for  
the District of Arizona.

JULIA MOSHER COLLINS, WM. B. LOUNT and  
HATTIE L. MOSHER,

Appellants,

vs.

CITY OF PHOENIX, a Municipal Corporation,  
Appellee.

**Order Approving Statement of Evidence.**

The foregoing statement of evidence and proceedings in the above-entitled cause having heretofore, on the 27th day of April, 1920, been lodged in the office

of the clerk of this Court by the appellants for examination by the defendant and appellee, and their solicitors having been duly notified by the plaintiffs or by the appellants thereof, and having stipulated and agreed with the appellee and defendant that the same is correct, and the appellee having further filed a written consent to the approval thereof, and the said statement, as above set forth, being found by the Judge of this court to be true, complete and properly prepared, the same is hereby approved and the same shall be filed in the office of the clerk of this court and become a part of the record in this case for the purposes of the appeal.

Dated May 15th, 1920.

(Signed) WM. H. SAWTELLE,  
Judge.

[Endorsements]: Filed May 15, 1920. C. R. McFall, Clerk. United States District Court, for the District of Arizona. [84]



In the District Court of the United States for the  
District of Arizona.

Honorable WILLIAM H. SAWTELLE, Presiding.

(Minute Entry of May 10th, 1920.)

IN EQUITY—E.-90 (Phoenix).

(Phoenix, Maricopa County, State of Arizona.)

JULIA MOSHER COLLINS, WILLIAM B.  
LOUNT, HATTIE L. MOSHER,  
Appellants,

vs.

CITY OF PHOENIX, a Municipal Corporation,  
Appellee.

**Order Enlarging Time to File Record and Docket  
Case.**

It appearing to the Court that the clerk of this court will be unable to prepare the record in this case and return and file the same with the clerk of the Circuit Court of Appeals for the Ninth Circuit at San Francisco, Cal., on the 29th day of May, 1920, that being the return day of the citation heretofore issued;

Now, therefore, for good cause, it is hereby ordered that the time to file the record in this case and to docket this case with the clerk of the U. S. Circuit Court of Appeals for the Ninth Circuit, and the return day of said citation be and same is hereby enlarged and extended until and including the first day of August, 1920. [85]

In the District Court of the United States, in, and for  
the District of Arizona.

E.-90.

JULIA MOSHER COLLINS, WILLIAM B.  
LOUNT, HATTIE L. MOSHER,

Appellants,

vs.

CITY OF PHOENIX, a Municipal Corporation,  
Appellee.

**Motion for Order Transmitting Plaintiffs' Original  
Exhibit "C."**

Comes now J. B. Woodward, attorney for appellants, and moves the Court for an order, making a certain map—sketch map of the property in dispute in the City of Phoenix—introduced as evidence on the hearing of this case, a part of the record, and the original so introduced transmitted with the records to the court on appeal.

J. B. WOODWARD,  
Attorney for Appellants.

[Endorsements]: Filed May 21, 1920. C. R. McFall, Clerk U. S. District Court. By Clyde C. Downing, Deputy. [86]

In the District Court of the United States, in and for  
the District of Arizona.

E.-90.

JULIA MOSHER COLLINS, WILLIAM B.  
LOUNT, HATTIE L. MOSHER,  
Appellants,

vs.

CITY OF PHOENIX, a Municipal Corporation,  
Appellee.

**Order Directing Transmission of Plaintiffs' Original  
Exhibit "C."**

Upon application of appellant herein, it is ordered  
that a certain map—sketch map of the property in  
dispute in the City of Phoenix—be transmitted with  
the records to the Circuit Court of Appeal of the  
Ninth Judicial District.

WM. H. SAWTELLE,  
Judge.

[Endorsements]: Filed July 19, 1920. C. R. Mc-  
Fall, Clerk U. S. District Court. [87]

In the District Court of the United States, in and for  
the District of Arizona.

IN EQUITY—E.-90 (Phoenix).

(Phoenix, Maricopa County, State of Arizona.)

JULIA MOSHER COLLINS, WILLIAM B.  
LOUNT, HATTIE L. MOSHER,  
Appellants,

vs.

CITY OF PHOENIX, a Municipal Corporation,  
Appellee.

**Affidavit of Service of Citation on Appeal.**

State of Arizona,  
County of Maricopa,—ss.

J. B. Woodward, being duly sworn, on oath states:

That he is of lawful age; and that in behalf of appellants herein he served a copy of hereto annexed citation on appeal upon appellee's attorneys, R. E. Sloan and J. E. Nelson, at their office, on the first day of May, A. D. 1920.

J. B. WOODWARD.

Subscribed and sworn to before me this first day  
of May, 1920.

THUREN G. HOUGHTON,  
Notary Public.

My commission expires April 30, 1921.

[Endorsement]: Filed May 1st, 1920. C. R.  
McFall, Clerk. By Clyde C. Downing, Deputy  
Clerk. [88]

**Plaintiffs' Exhibit "A."**

THIS INDENTURE, Made the Twenty-first day of September in the Year of our Lord, One Thousand Eight Hundred and Eighty-one, between B. L. Conyers and Isabell Conyers, his wife, of the City of Phoenix, Territory of Arizona, parties of the first part and Samuel D. Lount, of the same place, the party of the second part, WITNESSETH: That the said parties of the first part, for and in consideration of the sum of Thirteen Hundred Dollars, lawful money, of the United States of America, to them in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, doth by these presents, grant, bargain, sell, convey and confirm unto the said party of the second part, and to his heirs, and assigns forever, all that certain lot piece or parcel of land, situate, lying and being in the County of Maricopa Territory of Arizona, and bounded and described as follows, to-wit: That portion of the West half of the South east quarter of Section number five in Township one North, of Range three East of the District of land subject to sale at the land office at Florence, Territory of Arizona, more particularly described as follows: Commencing at the intersection of Van Buren and Centre Street of *sd* City of Phoenix on the East Side of Centre Street and the North Side of Van Buren Street, and running thence East along the line of said Van Buren Street, Seven Hundred and Fifty four feet to a post, thence North Seven Hundred and fourteen (714) feet to a post, Thence West

Seven hundred and Sixty-one feet to a post, Thence South Seven Hundred and twelve feet to the place of beginning.

Together with all and singular the tenements, hereditaments and appurtenances thereunto belonging, or in any wise appertaining, and the rents, issues and profits thereof; and, also, all the estate, right, title, interest, claim of homestead, property, possession, claim and demand whatsoever, as well in law as in equity of the said parties of the first part, of, in or to the said premises, and every part or parcel thereof, with the appurtenances.

TO HAVE AND TO HOLD, All and singular, the said described premises, together with the appurtenances thereunto incident, unto the said party of the second part, his heirs and assigns, forever. And the said parties [89] of the first part and their heirs, the said premises, in quiet and peaceable possession of the said party of the second part, his heirs and assigns, against the said party of the first part and their heirs, and against all and every person and persons whomsoever, lawfully claiming or to claim the same, shall and will WARRANT, and by these presents forever DEFEND.

IN WITNESS WHEREOF, the said parties of the first part, have hereunto set their hands and seals the day and year first above written.

B. L. CONYERS. (Seal)

ISABELLA CONYERS. (Seal)

Signed, sealed and delivered in the presence of:

\_\_\_\_\_  
\_\_\_\_\_



Territory of Arizona,  
County of Maricopa,—ss.

On this 21st day of September, A. D. 1881, before me, R. F. Kirkland, recorder in and for the County of Maricopa, Territory aforesaid, personally appeared B. L. Conyers, and Isabella Conyers, his wife, known to me to be the same persons whose names are subscribed to the foregoing instrument, and who, each of them, acknowledged to me that they executed the same freely and voluntarily and for the uses and purposes therein mentioned. And the said Isabella Conyers described in said instrument as a married woman and the wife of the said B. L. Conyers, upon an examination without the hearing of her husband, I made her acquainted with the contents of the said instrument and thereupon she acknowledged to me that she executed the same freely and voluntarily for the uses and purposes therein mentioned, and that she did not wish to retract said execution.

In witness whereof I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

R. F. KIRKLAND,  
County Recorder,  
By E. B. Kirkland,  
Deputy.

[End.]: Dated Sept. 21, 1881. Recorded at the request of M. W. Kales, Sept. 21, A. D. 1881, at 45 min. past 2 P. M. in Book 7 of Deeds, page 32

Records of Maricopa County, Arizona. R. F. Kirkland, County Recorder. By E. B. Kirkland, Deputy. Plaintiffs' Exhibit No. "A." Admitted and filed March 12, 1920. C. R. NeFall, Clerk. By Clyde C. Downing, Deputy. Case No. E.-90, Phoenix. [90]

**OFFICIAL PLAT,**  
**CHURCHILL'S ADDITION**  
 TO THE CITY OF PHOENIX  
 MARICOPA COUNTY  
 ARIZONA TERRITORY.

Being a lot of the one quarter (S.E. 1/4) of Section Five (5) Township one (1) North, Range Three (3) East of the Gila and Salt River Base and Meridian.

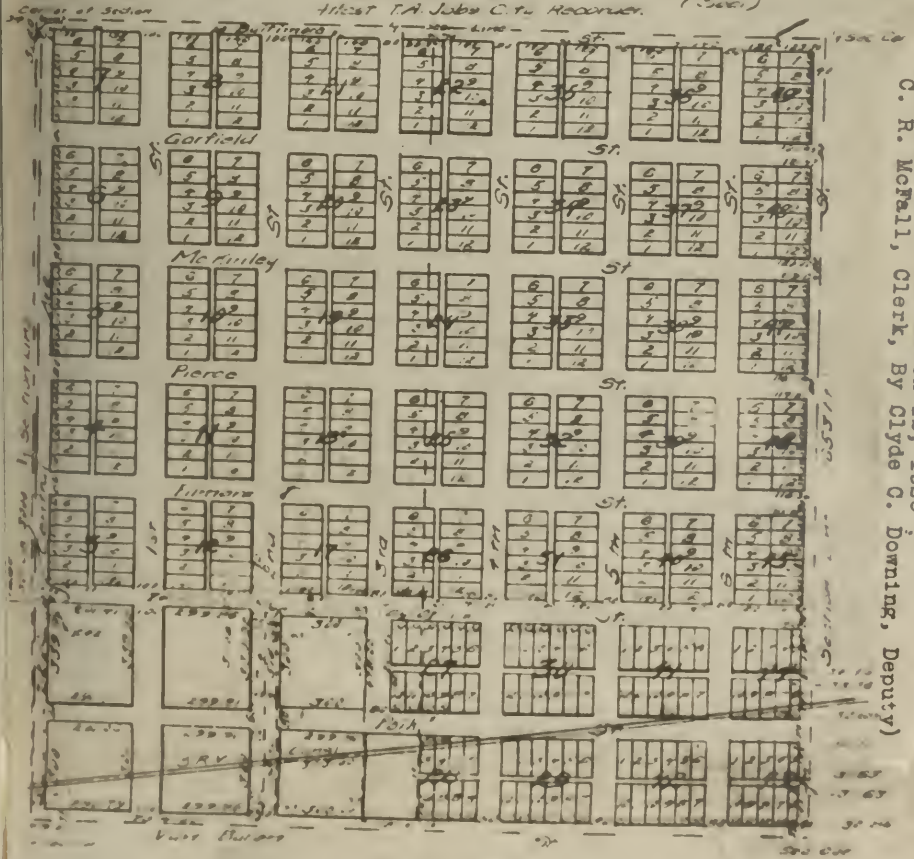
**DEDICATION**

The annexed plat of Blocks and lots, streets, avenues and alleys, being all of the South East quarter (S.E. 1/4) of Section Five (5), Township one (1) North, Range three (3) East of the Gila and Salt River Base and Meridian, is hereby published as the official and complete plat of the survey of Churchill's Addition to the City of Phoenix, Maricopa County, Arizona Territory, showing blocks and lots and giving dimensions of same also the numbers of each block and lot, widths and widths of all streets and avenues, the widths of all alleys, and the plat is a correct and true plat of said survey of said Churchill's Addition, and the Streets, avenues and alleys shown thereon are hereby dedicated to the public according to ordinance No. 215 of the City of Phoenix A.T.

In witness whereof the Common Council of the City of Phoenix A.T. has caused these presents to be signed by the Mayor of said City and in its behalf and attested to by the City Recorder of said City and the official seal of said City to be affixed hereon.

Done this 7th day of September A.D. 1898 the Common Council of the City of Phoenix by J.C. Adams, Mayor.

Attest T.A. John City Recorder. (Seal)



(Endorsement: Plaintiffs Exhibit No. "B";  
 Admitted and filed March 12, 1920  
 C. R. McFall, Clerk, By Clyde C. Downing, Deputy)

Recorded September 20th, 1898 at 5 PM. Book 20, Page 10

Surveyed by J. C. Adams  
 City of Phoenix



**Plaintiffs' Exhibit "D."**

DEPARTMENT OF THE INTERIOR,  
UNITED STATES LAND OFFICE,  
Phoenix, Ariz.

November 21, 1919.

To Whom It May Concern:

I hereby certify that the records of this office show that Pre-emption Declaratory Statement 97 was filed January 10 (or 16) 71 and Apr. 21, 71 by Daniel Troomey for the SE. 1/4, section 5, Tp. 1 N., R. 3 East G. and S. R. Mer. Entry No. 45 was made Jan. 2, 74.

SCOTT WHITE,  
Receiver.

[Endorsements]: Ptf's. Ex. "D." Admitted and Filed March 12, 1920. C. R. McFall, Clerk. By Clyde C. Downing, Deputy. [92]

---

In the District Court of the United States, in and for  
the District of Arizona.

E.-90.

JULIA MOSHER COLLINS, WILLIAM B.  
LOUNT, HATTIE L. MOSHER,

Appellants,

vs.

CITY OF PHOENIX, a Municipal Corporation,  
Appellee.

**Praeceptum for Transcript of Record.**

The clerk of this court is hereby directed to pre-

pare and certify a transcript of the record in the above-entitled case for the use of the United States Circuit Court of Appeals for the Ninth Judicial Circuit by including therein the following:

Complaint of Julia Mosher Collins, William B. Lount and Hattie L. Mosher, filed November 3d, 1919.

Answer of City of Phoenix, filed November 22d, 1919.

Findings and judgment, filed March 12th, 1920.

Notice of Appeal, filed March 31st, 1920.

Petition for appeal, filed March 31st, 1920.

Order allowing appeal and fixing bond, filed April 12th, 1920.

Statement of evidence.

Amended assignment of errors, filed April 26, 1920.

Bond on appeal, filed April 27, 1920.

Appellants' Exhibits "A," "B," "C," "D."

Citation, filed April 30, 1920.

Praeipe for record, filed May 1, 1920.

Notice of filing statement, filed April 27, 1920.

(Signed) J. B. WOODWARD,  
Attorney for Appellants.

[Endorsements]: E.-90. In the District Court of the United States, in and for the District of Arizona. Julia Mosher Collins, William B. Lount, Hattie L. Mosher, Appellants, vs. City of Phoenix, a Municipal Corporation, Appellee. Praeipe for Record. Filed May 1, 1920. C. R. McFall, Clerk. By Clyde C. Downing, Deputy Clerk.

Service of copy accepted this May 1, 1920.

RICHARD E. SLOAN,  
Atty. for Appellee. [93]



In the District Court of the United States for the  
District of Arizona.

**Certificate of Clerk U. S. District Court to Transcript  
of Record.**

United States of America,  
District of Arizona,—ss.

I, C. R. McFall, Clerk of the District Court of the United States for the District of Arizona, do hereby certify that I am the custodian of the records, papers and files of the said United States District Court for the District of Arizona, including the records, papers and files in the case of Julia Mosher Collins, William B. Lount, and Hattie L. Mosher, Appellants, vs. City of Phoenix, Appellee, said case being No. E.-90 (Phoenix) on the docket of said court.

I further certify that the attached transcript contains a full, true and correct transcript of the proceedings in said case and of all papers filed therein, together with the endorsements of filing thereon, as set forth in the praecipe filed in said case and made a part of the transcript attached hereto, as the same appears from the originals of record and on file in my office as such Clerk in the City of Phoenix, State and District aforesaid.

I further certify that the cost for preparing and certifying to said record, amounting to \$28.40, has been paid to me by Hattie L. Mosher (appellant) in the above-entitled cause.

And I further certify that the original citation issued in this cause is hereto attached.

WITNESS my hand and the seal of said United States District Court this 20th day of July, A. D. 1920.

[Seal] C. R. McFALL,  
Clerk United States District Court, District of  
Arizona. [94]

---

In the District Court of the United States, in and for  
the District of Arizona.

IN EQUITY—E.-90 (Phoenix).

(Phoenix, Maricopa County, State of Arizona.)

JULIA MOSHER COLLINS, WILLIAM B.  
LOUNT, HATTIE L. MOSHER,

Appellants,

vs.

CITY OF PHOENIX, a Municipal Corporation,  
Appellee.

**Citation on Appeal.**

United States of America,—ss.

To City of Phoenix, and to R. E. Sloan and J. E.  
Nelson, Its Attorneys, GREETING:

YOU ARE HEREBY CITED AND ADMON-  
ISHED to be and appear before the United States  
Circuit Court of Appeals for the Ninth Judicial Cir-  
cuit of the United States, held at San Francisco,  
Cal., on the 29th day of May, 1920, pursuant to an  
order allowing an appeal filed and entered in the  
clerk's office of the District Court of the United  
States for the District of Arizona, from a final de-  
cree signed, filed and entered on the 12th day of

March, 1920, in that certain suit, being In Equity—No. E.-90, wherein Julia Mosher Collins, William B. Lount and Hattie L. Mosher are plaintiffs and appellants, and you are the defendant and appellee, to show cause, if any there be, why the decree rendered against said appellants, as in said order allowing said appeal mentioned, should not be corrected, and why justice should not be done to the parties in that behalf.

Witness the Honorable WILLIAM H. SAWTELLE, United States District Judge for the District of Arizona, this 30th day [95] of April, 1920, and of the Independence of the United States 144th.

WM. H. SAWTELLE,  
United States District Judge for the District of  
Arizona.

Service accepted this 30th day of April, 1920.

---

Solicitor for Defendant.

[Endorsed]: E.-90 (Phx.) In the District Court of the United States in and for the District of Arizona. Julia Mosher Collins, William B. Lount, Hattie L. Mosher, Appellants, vs. City of Phoenix, a Municipal Corporation, Appellee. In Equity—(Phoenix). (Phoenix, Maricopa County, State of Arizona). Filed April 30, 1920. C. R. McFall, Clerk. By Clyde C. Downing, Deputy Clerk.

[Endorsed]: No. 3525. United States Circuit Court of Appeals for the Ninth Circuit. Julia Mosher Collins, William B. Lount and Hattie L. Mosher, Appellants, vs. City of Phoenix, a Municipal Corporation, Appellee. Transcript of Record. Upon Appeal from the United States District Court for the District of Arizona.

Filed July 23, 1920.

F. D. MONCKTON,

Clerk of the United States Circuit Court of Appeals  
for the Ninth Circuit.

By Paul P. O'Brien,  
Deputy Clerk.